

**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)**

**Wednesday, May 14, 2025
2:00 p.m.**

Committee Members Present:

Annette Carrasquillo
Scott Edwards
David Gallaher
Sam Hagan

Bob Knight
Randal Mercer, Chairman
Ian Moore

Excused / Absent:

Carl Barraco, Jr.
Bill deDeugd
Victor Dupont

Tracy Hayden, Vice-Chair
Michael Roeder

Lee County Staff Present:

Erika Garcia, DCD Administration
Janet Miller, DCD Planning

Amanda Swindle, Assistant County Attorney

AGENDA ITEM 1 - CALL TO ORDER/REVIEW OF AFFIDAVIT OF POSTING:

Mr. Randal Mercer, Chairman, called the meeting to order at 2:00 p.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B. Mr. Mercer stated we have a quorum and asked Ms. Amanda Swindle, Assistant County Attorney, if we had a legal meeting.

Ms. Amanda Swindle, County Attorney's Office, confirmed the Affidavit of Posting was legally sufficient and the meeting could proceed.

AGENDA ITEM 2 - APPROVAL OF MINUTES – March 12, 2025

Mr. Mercer asked if anyone had any comments or changes to the minutes from the March 12, 2025 meeting. There were none. He asked if there was a motion to approve.

Ms. Carrasquillo made a motion to approve the March 12, 2025 minutes, as written. The motion was seconded by Mr. Edwards. The Chair called the motion, and it passed 7-0.

AGENDA ITEM 3 – ORDINANCE AMENDING CHAPTER 20, PARKS AND RECREATION, ARTICLE II, PERTAINING TO SMOKING AND VAPING AT PUBLIC PARKS AND BEACHES

Ms. Swindle gave an overview of the Ordinance.

Mr. Knight referred to Item 1 on Page 2 that reads, "...with the exception of unfiltered cigars." He asked if this meant that people were allowed to smoke a cigar in a park.

Ms. Swindle stated that was correct. Unfiltered cigars are not included in this prohibition.

Mr. Gallaher asked why unfiltered cigars were exempted from this prohibition.

Ms. Swindle stated that as far as the rational basis for that exemption, she could not provide one, but there would be a logical reason for that exemption. She reviewed the staff analysis with the legislature and was unable to find what she would consider to be a rational justification for the exemption. She personally felt it was in order to get the bill passed.

Ms. Carrasquillo asked if unfiltered cigars were allowed on the state level.

Ms. Swindle stated that was correct. This language mirrors the state language.

Mr. Knight asked if the county was required to mirror the language exactly or if they could leave it out and see what happens as a result.

Ms. Swindle stated that to the extent that our park rangers enforce it against a patron with an unfiltered cigar, it would be contrary to state law because the general scheme is that regulations of smoking are preempted to the state. The counties' only authority has to be narrowly tailored to what we are provided with in the statute.

Ms. Carrasquillo asked for confirmation that regardless of the county's ordinance, the state dictates what you can or cannot do on public beaches or parks.

Ms. Swindle stated that was correct as far as smoking and vaping is concerned except for the narrow authority the state gives the counties.

Mr. Knight asked if the county then takes that and narrows it some more.

Ms. Swindle stated staff could draft a regulation that is less restrictive than the one provided for by the state, but they cannot draft one that is more restrictive than what is provided by the state.

Mr. Gallaher asked what the purpose was in prohibiting cigarettes and vaping but not cigars. He did not feel it made sense. Cigars are a health concern as well as the other items and the smoke from cigars is often more offensive to people than that of cigarettes and vaping. It seemed biased to him.

Ms. Swindle stated she did not disagree with that. The justifications for the prohibition in general are health, safety, and welfare. She could not find a rational justification for this exemption.

Mr. Gallaher stated there is a smaller crowd of people that smoke cigars than cigarettes and vaping.

Ms. Swindle stated that as a beach goer herself, she sees less people smoking cigars than vaping. Her opinion was that the bill would not have passed without that exemption written into it.

Ms. Carrasquillo asked for confirmation that even without this, if someone was smoking or vaping on a public beach, they could be removed or stopped.

Ms. Swindle stated that was incorrect. This amendment is needed.

Ms. Carrasquillo asked for confirmation that this amendment would be needed even though it already exists on the state level.

Ms. Swindle clarified that the prohibition does not exist on the state level. The authority of counties to create a prohibition exists on a state level.

Mr. Mercer asked about medicinal smoking and vaping. He asked if that was allowed.

Ms. Swindle stated this resolution only applies to any lighted tobacco products. This means that technically this amendment does not address anything other than a tobacco product.

Mr. Hagan asked if someone is allowed to smoke on the beach now.

Ms. Swindle stated there is no prohibition against outdoor smoking at any of our parks or beaches.

Mr. Hagan asked if the commissioners were the ones to suggest that we extend the prohibition to the outdoor areas.

Ms. Swindle stated that was correct. It was brought up as a commissioner item by Commissioner Hamman and it was unanimously voted on by the Board to bring forward. She noted that the park rangers already enforce the indoor smoking prohibition but now that it is outdoors, it will take some education efforts. This is how the park rangers usually handle changes like this. They do not initially cite people. Initially, they give people warnings.

Mr. Gallaher asked what the penalty was for this.

Ms. Swindle stated it is a first, second, and third offense with fines of \$100, \$200, and \$300 dollars.

Mr. Gallaher asked what would happen after a third offense.

Ms. Swindle stated that after a third offense, the county would trespass the person.

Mr. Knight stated that the reason this committee is asking so many questions is because once this goes to the public, the questions this committee has will be nothing in comparison to the feedback that will be received by the public. He asked if there was a way to make this more understandable.

Ms. Swindle stated this committee was welcome to suggest other clarifying language.

Ms. Carrasquillo asked what the reason was behind Commissioner Hamman bringing this item forward.

Ms. Swindle stated that the City of Fort Myers adopted a similar ordinance a year ago. She explained that after the 2019 amendment came forward, different counties and cities started adopting an ordinance. She believed health, safety, and welfare were probably the primary motivation.

Mr. Gallaher stated that most likely the only resistance that would be received would be from those who smoke.

Ms. Swindle stated there are also many people who are against government regulation in general, and they voice their opinions at County Commission meetings.

Mr. Hagan stated that he planned to vote against this item because he felt badly for people who smoke.

Mr. Knight made a motion to approve the ordinance as written. Mr. Gallaher seconded the motion. The motion passed 6-1. Mr. Hagan was opposed.

AGENDA ITEM 4 - Adjournment

The next meeting is scheduled for Wednesday, July 9, 2025.

Mr. Mercer announced that he would be out of town for the July 9th meeting, but the Vice Chair would be in attendance.

There was no further business.

The meeting adjourned at 2:15 p.m.