

**ORDINANCE NO. 22-06**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 50 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES" OF THE VILLAGE CODE, TO CREATE SECTION 50-2 "SMOKING PROHIBITED" TO PROHIBIT SMOKING IN VILLAGE PARKS AND BEACHES, AND TO PROHIBIT SMOKING IN COUNTY PARKS AND BEACHES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 386, Part II of Florida Statutes, the Florida Clean Indoor Air Act, implements Article X, Section 20 of the Florida Constitution, which prohibits a person from smoking tobacco or using a vapor-generating electronic device in an enclosed indoor workplace, with certain exceptions; and

**WHEREAS**, previously, Florida Statutes preempted the regulation of smoking and did not allow counties or municipalities to regulate smoking; and

**WHEREAS**, on June 24, 2022, the Florida Governor signed into law House Bill 105 ("HB 105"), which amends the Florida Clean Indoor Air Act to allow counties and municipalities to restrict smoking within the boundaries of any public beach or park, except for unfiltered cigars; and

**WHEREAS**, the Village Council desires to prohibit smoking in its municipal parks and beaches; and

**WHEREAS**, the Village Council also desires to prohibit smoking in parks and beaches owned by Monroe County and within the Village boundaries unless such restrictions conflict with a County ordinance; and

**WHEREAS**, the Village Council deems it to be in the best interest of the Village to adopt this Ordinance creating Section 50-2 to prohibit smoking in Village parks and beaches; and

**WHEREAS**, the Village Council deems it to be in the best interest of the Village to adopt this Ordinance creating Section 50-2 to prohibit smoking in parks and beaches owned by Monroe County within the Village boundaries unless such restrictions conflict with a County ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Village Code Amended.** That Chapter 50 "Streets, Sidewalks and Other Public Places" of the Village Code is hereby amended to create Section 50-2 "Smoking Prohibited" to read as follows: <sup>1</sup>

**CHAPTER 50 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

\* \* \*

**Section 50-2. Smoking Prohibited**

**(1) Definitions**

**(a) For purposes of this Section, "Village park" shall mean any land, water area, or trail corridor and all facilities thereon, under the jurisdiction, control, or ownership of the Village.**

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<sup>1</sup> Deleted text is indicated by a ~~strikethrough~~ and added text is indicated by an underline.

- (b) For purposes of this Section, "County park" shall mean any land, water area, or trail corridor and all facilities thereon, under the jurisdiction, control, or ownership of Monroe County, Florida.
- (c) For purposes of this Section, "Village beach" shall mean the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, under the jurisdiction, control, or ownership of the Village.
- (d) For purposes of this Section, "County beach" shall mean the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, under the jurisdiction, control, or ownership of Monroe County, Florida.

## (2) Smoking Prohibition

- (a) It shall be unlawful for any person to smoke in a Village park or Village beach, except for the smoking of unfiltered cigars.
- (b) Unless such restriction conflicts with an ordinance of Monroe County, Florida, it shall be unlawful for any person to smoke in a County park or County beach within Village boundaries, except for the smoking of unfiltered cigars.
- (c) Any violations of this section may be enforced by the Village by any means authorized by law, including, but not limited to, a code enforcement notice of violation, a code enforcement civil citation, a summons, a notice to appear in the county court, an arrest, or a civil action for injunctive relief. The enforcement procedures outlined in this subsection are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any part of this section.

**Section 3. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity

of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Islamorada, Village of Islands; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

**PASSED** on first reading this 15<sup>th</sup> day of September, 2022.

The foregoing Ordinance was offered by Councilman David Webb, who moved its adoption on first reading. This motion was seconded by Mayor Pete Bacheler, and upon being put to a vote, the vote was as follows:

|                                 |        |
|---------------------------------|--------|
| Mayor Pete Bacheler             | Yes    |
| Vice Mayor Henry Rosenthal      | Absent |
| Councilman Mark Gregg           | Yes    |
| Councilman Joseph B. Pinder III | Yes    |
| Councilman David Webb           | Yes    |

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The foregoing Ordinance was offered by Mark Gregg, who moved its adoption on second reading. This motion was seconded by Joseph B. Pinder III, and upon being put to a vote, the vote was as follows:

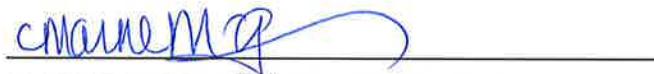
|                                 |            |
|---------------------------------|------------|
| Mayor Pete Bacheler             | <u>yes</u> |
| Vice Mayor Henry Rosenthal      | <u>yes</u> |
| Councilman Mark Gregg           | <u>yes</u> |
| Councilman Joseph B. Pinder III | <u>yes</u> |
| Councilman David Webb           | <u>yes</u> |

**PASSED AND ADOPTED** on the second reading this 6<sup>th</sup> day of October, 2022.



PETE BACHELER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF  
ISLAMORADA, VILLAGE OF ISLANDS ONLY



VILLAGE ATTORNEY