

ORDINANCE NO. 23-13

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS,
FLORIDA, AMENDING CHAPTER 50 "STREETS, SIDEWALKS
AND OTHER PUBLIC PLACES", ARTICLE I "GENERAL",
CREATING SECTION 50-3 TO BE ENTITLED "TRESPASS
WARNINGS; AUTHORIZATION TO ISSUE TRESPASS
WARNING FOR PUBLIC PROPERTY; AND APPEAL
PROCESS" OF THE VILLAGE CODE RELATING TO TRESPASS
ON PUBLIC PROPERTY WITHIN THE VILLAGE; PROVIDING
FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE
CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, pursuant to Chapter 166, Florida Statutes, authorizes municipalities to have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the "Village") desires to provide for the issuance of trespass warnings to any individual who violates any county or Village ordinance or state law which was committed while on or within a Village Facility, as such term is hereinafter defined, for the specific Village Facility where the violation occurred; and

WHEREAS, the Village Council desires to provide for an appeals procedure relating to such trespass warnings; and

WHEREAS, the Village Council finds that including such regulations in the Village Code is in the best interests of the Village and its residents.

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

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Addition to the Code. That a new Section 50-3, "Trespass warnings; authorization to issue trespass warning for public property; and appeal process," of Article I, "General" of Chapter 50, "Streets, Sidewalks and Other Public Places," of the Village Code is hereby added as follows:¹

CHAPTER 50 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. – GENERAL.

Section. 50-3. - Trespass warnings: authorization to issue trespass warning for public property; and appeal process.

- (a) Scope.** For purposes of this section, the term "Village Facility" shall mean any parcel of property owned or leased by the Islamorada, Village of Islands, Florida ("Village"), including but not limited to administration centers, community centers, vacant parcels, fire stations, libraries, parks, and beaches. A "Village Facility" does not include a Village maintained right-of-way.
- (b) The village manager and any Village employee designated by the Village Manager to have control over a Village Facility are authorized to issue a trespass warning to any individual who violates any village ordinance, rule or regulation, or state law or lawful directive of a Village employee or deputy sheriff, if said violation is committed while on or within a Village Facility for the specific property where the violation occurred.**

¹ Coding: **Strikethrough words** are deletions to the existing words. **Underlined words** are additions to the existing words. Changes between first and second reading are indicated with **highlighted double strikethrough** and **double underline**.

- (c) When no Village employee designated by the Village Manager is present at a Village Facility, the sheriff and his/her deputies, or any state or municipal law enforcement officer present is authorized to issue a trespass warning to any individual who violates any county or Village ordinance or state law which was committed while on or within a Village Facility for the specific Village Facility where the violation occurred.
- (d) Trespass warnings shall be issued as follows:
 - (1) For the first violation, the individual may be issued a trespass warning for a period not to exceed one year.
 - (2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two years.
- (e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the Village employee or deputy having control over the Village Facility. The written trespass warning shall advise of the right to appeal and the manner for filing the appeal.
- (f) Any person found on or within any Village Facility in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.
- (g) The Village Manager may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary Village business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof and shall not be unreasonably denied.
- (h) This section shall not be construed to limit the authority of any Village employee or sheriff's deputy to issue a trespass warning to any person for any lawful reason for any Village property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the Village employee or deputy.
- (i) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:
 - (1) An appeal of the trespass warning must be filed, in writing within three business days of the issuance of the warning, and shall include the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal.

- (2) The appeal shall be filed at the office of the Village Manager, located at 86800 Overseas Highway, Islamorada, FL 33036.
- (3) Appeals shall be heard by the Village Manager or his/her designee.
- (4) Within five business days following the filing of the appeal, the Village Manager or his/her designee shall schedule a hearing. Notice of the hearing shall be provided to the appellant by:
 - a. Written notification sent to an address provided by the individual to the Village Manager; and
 - b. Posting the notice at Village Manager's Office;
 - c. If appellant cannot be reached by mail, then notice posted at the Village Manager's office shall be sufficient.
- (5) The Village Manager or his/her designee shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 15 days from the filing of the appeal.
- (6) Copies of documents in the Village's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
- (7) At his or her own expense, the appellant shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at their own expense.
- (8) The Village Manager or his/her designee shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.
- (9) The Village shall bear the burden of proof by a preponderance of the evidence that the trespass warning was properly issued pursuant to the criteria of this section.
- (10) If the appellant fails to attend a scheduled hearing, the Village Manager or his/her designee shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- (11) Within five business days of the hearing, the Village Manager or his/her designee shall issue a written decision on the appeal which shall be mailed

to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the information desk of the Village Manager.

- (12) The decision of the Village Manager or his/her designee shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

Section 3. Repeal of Conflicting Provisions. The provisions of the Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. 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 5. Inclusion in the Code. 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, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word where applicable.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing Ordinance was offered by Councilmember Henry Rosenthal, who moved its adoption on first reading. This motion was seconded by Vice Mayor Sharon Mahoney, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	YES
Vice Mayor Sharon Mahoney	YES
Councilwoman Elizabeth Jolin	NO
Councilman Mark Gregg	YES
Councilman Henry Rosenthal	YES

PASSED on first reading this 28th day of September, 2023.

The foregoing Ordinance was offered by Sharon Mahoney, who moved its adoption on second reading. This motion was seconded by Elizabeth Jolin, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>

PASSED AND ADOPTED on the second reading this 14th day of December, 2023.

DocuSigned by:

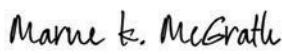


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JOSEPH B. PINDER, III, MAYOR

ATTEST:

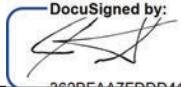
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MARNE MCGRATH, VILLAGE CLERK

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

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JOHN J. QUICK, VILLAGE ATTORNEY

