

ORDINANCE NO. 24-07

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 2 "ADMINISTRATION," ARTICLE II "OFFICERS AND EMPLOYEES," DIVISION 1 "GENERALLY" BY CREATING SECTION 2-33 "REIMBURSEMENT OF LEGAL EXPENSE IN DEFENSE OF OFFICIALS"; PROVIDING FOR THE REIMBURSEMENT OF DEFENSE OF OFFICIALS; DEFINITIONS; REQUEST AND APPROVAL; AUTHORIZATION; RESERVATION OF RIGHTS AND IMMUNITIES; APPLICABILITY; MALICIOUS, FRIVOLOUS OR GROUNLESS ALLEGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Village Council finds that in order to encourage qualified persons to serve the Village it is necessary to protect such persons from certain legal expenses incurred in protecting themselves from allegations of violating ethics standards and guidelines, while acting in the course and scope of their service to the Village; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Village Code Amended. That Chapter 2 "Administration," Article II "Officers and Employees," Division 1 "Generally" of the Village Code of Islamorada, Village of Islands, Florida, is hereby amended by creating Section 2-33 "Reimbursement of Legal Expenses in Defense of Officials" to read as follows:

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

Chapter 2 – ADMINISTRATION.

ARTICLE II. - Officers and Employees.

DIVISION 1. - Generally.

Sec. 2-33. Reimbursement of Legal Expenses in Defense of Officials.

(a) Definitions. When used in this section, the following words shall mean as indicated:

1. The term "Official" shall mean solely the following: the Mayor, all members of the Village Council, the Village Manager, the Village Clerk, the Village Attorney, the Finance Director, the Public Works Director, the Building Official, and all Village department heads.

2. The term "Village Funds" shall mean only such funds appropriated for expenditure by the Village Council for the purposes of this section, not otherwise prohibited by law.

3. The term "Counsel" shall mean the attorney independently selected by the Official for the purpose of defending the Official in actions or proceedings in accordance with this section. Counsel shall be licensed to practice law in Florida, in good standing with the Florida Bar, experienced in ethics defense, and otherwise adequately qualified for the purpose of such representation.

4. The term "Legal Expenses" shall mean reasonable attorney's fees and necessary defense expenses directly incurred in defending an Official in accordance with this section.

5. The term "Legal Defense" shall mean the services provided by Counsel in defending an Official in accordance with this section.

(b) Defense of Officials. The village council shall reimburse any Official for his/her Legal Expenses incurred in successfully defending any criminal, civil, ethics, and/or administrative legal action brought against the Official for any action taken by the Official while acting within the scope of his/her duties and responsibilities. This provision includes instances when such Official is charged with a violation of any provision of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, or any applicable Village ethics ordinances. The provision of Legal Defense is limited to the payment of Legal Expenses to Counsel for the purpose of defending actions or proceedings in accordance with the provisions of this section. This section shall not apply to any action brought or initiated by the Village against an Official.

(c) Request and Approval. A written request for the provision of Legal Defense ("Request") shall be submitted by the Official and reviewed in accordance with the following procedure:

1. A Request shall be submitted to and reviewed by the Village Manager except where the Village Manager submits a Request on his or her personal behalf; in which event, the Mayor shall review such Request;

2. A Request shall be submitted within ten (10) calendar days after the disposition of any proceeding which is the subject of subsection (b) hereof;

3. A Request shall include the name, address, resume, and hourly rate of Counsel, and a copy of the complaint, notice, charge, summons, process or other initiating pleading, the response and the final disposition of the complaint;

4. The village council shall approve or deny the Request at the next regular village council meeting after receipt of the Request, subject to notice requirements and agenda availability. The approval or denial is subject to the Village Attorney's concurrence that said Request is consistent with the requirements of this section.

(d) Authorization. Such reimbursement shall be authorized by the village council only at such time as it is finally determined in the litigation that the Official (if he/she is still serving as such) is not liable for his/her actions taken within the scope of his/her duties and responsibilities as an Official. However, in no event shall such reimbursement be paid to a person under any of the following circumstances:

1. Conviction by a jury of any crime, irrespective of whether adjudication of guilt is withheld by the court;
2. A finding by the Commission on Ethics that the Official violated any applicable ethics provision;
3. A plea of guilty or nolo contendere has been entered in the Official's behalf, irrespective of whether adjudication of guilt is withheld by the court; or
4. A court stipulation has been entered into by the Official wherein the Official agrees to dispose of the charges by compromise rather than by adjudication of the merits of the issues by a court, jury or other adjudicatory body.

(e) Reservations of rights and immunities. The provision of the Legal Defense of an Official as provided in subsection (b), including those acts for which the defense may be provided and the extent of Village Funds which may be expended, shall be solely within the discretion of the Village.

1. The Village reserves unto itself the right to deny approval of the Request if it is determined by the village council to be beyond the scope of this section or inconsistent with the purposes of this section;

2. The Village reserves unto itself the right to deny the Request where the Official has failed to select qualified Counsel, or where the proposed fee schedule is deemed unreasonable;
3. The Village reserves unto itself the right to deny approval of the Request where such Official fails to cooperate in the defense of such action or proceeding;
4. The Official shall reimburse the Village for any and all Village Funds expended for payment of Legal Expenses where it is later determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Official, or where such Official was adjudicated guilty of the alleged violation. The Village reserves unto itself the right to seek reimbursement and/or recovery from an Official of all Village Funds expended for payment of Legal Expenses in accordance with this section where it is later determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Official, or where such Official was adjudicated guilty of the alleged violation;
5. Nothing in this section shall authorize the Village to provide for the Legal Defense of an Official where the alleged act or omission was taken outside the course or scope of employment or duties of the Official, or where the Official has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property;
6. Nothing in this section shall authorize the Village to provide for the Legal Defense of an Official where it is alleged that said Official failed to comply with applicable financial and gift disclosure requirements mandated by Chapter 112, Florida Statutes, or any applicable Village ethics ordinances concerning financial and gift disclosure.
7. Nothing in this section shall be construed as a waiver by the Village or any Official of any claim of immunity, including sovereign immunity, applicable to any action;

(f) *Declared Village Purpose.* It is hereby declared that all such expenditures of Legal Expenses when made from Village Funds pursuant to this section shall be for a valid Village and public purpose within the meaning of article VII, section 10 of the Florida Constitution of 1968.

(g) *Applicability.* The provisions of this section shall apply to all actions and proceedings pending upon or instituted after the effective date of this section. As used herein, an action shall be construed to be pending where the action has not been tried, or if tried where the judgment has not become final by reason of the completion of any appellate proceedings.

(h) *Malicious, Frivolous or Groundless Allegations.* In accordance with Section 112.317(7), Fla. Stat., where it is determined that the complaining party filed a frivolous or groundless complaint, or filed a complaint with malicious intent to injure the reputation of the Official by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation, the Village may seek recovery of Legal Expenses incurred by the Village from the complaining party in the name of the Official, or as subrogee of the Official.

Section 3. Repeal of Conflicting Provisions. The provisions of the Village 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 sentence, section, 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 sentences, sections, clauses or phrases of the 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 the provisions of this Ordinance shall become and be made part of the Village Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

[Remainder of this page intentionally left blank]

The foregoing Ordinance was offered by Mark Gregg, who moved for its adoption on first 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>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Abstain</u>

PASSED on the first reading this 9th day of January, 2024.

The foregoing Ordinance was offered by Elizabeth Jolin, who moved for its adoption on second reading. This motion was seconded by Mark Gregg, 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>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Abstain</u>

PASSED AND ADOPTED on the second reading this 15th day of February, 2024.

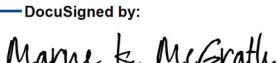
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Joseph B. Pinder III

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JOSEPH B. PINDER, III, MAYOR

ATTEST:

DocuSigned by:
Marne K. McGrath

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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

DocuSigned by:



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JOHN J. QUICK, VILLAGE ATTORNEY

