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**ORDINANCE NO. 2026-**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES, VILLAGE OF BISCAYNE PARK TO PROHIBIT SMOKING AND EXCESSIVE IDLING OF VEHICLES AT CITY PARKS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER’S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 4.03 of the Village Charter of the Village of Biscayne Park empowers the Village Commission to adopt, amend, or repeal such ordinances as may be required for the proper governing of the Village; and

**WHEREAS**, in 2022 the Florida Legislature adopted §§386.201 – 386.2125, *Florida Statutes*, also known as the “Florida Clean Air Act”; and

**WHEREAS**, the purpose of the Florida Clean Air Act is to protect the public from the health hazards associated with second-hand tobacco smoke; and

**WHEREAS**, the Florida Clean Air Act specifically authorizes municipalities, such as the Village to regulate and prohibit smoking within the boundaries of Village parks; and

**WHEREAS**, §316.1975, Florida Statutes, prohibits the unattended idling of a vehicle; however, the health hazards associated with idling vehicle exhaust are not limited to instances where the vehicle is unattended, and minor children are disproportionately exposed and impacted by idling vehicle exhaust at Village parks; and

**WHEREAS**, public notice has been given of the time and place of the public hearing regarding adoption of this Ordinance; and

**WHEREAS**, the Director of the Parks and Recreation department recommends the adoption of this Ordinance to protect the users of the Village’s parks, particularly minor children, from the health hazards associated with second-hand tobacco smoke and the exhaust of idling vehicles; and

**WHEREAS**, the Village Commission of the Villag of Biscayne Park deems it to be in the best interest of the residents, and visitors of the Village to amend the Code to prohibit smoking and the excessive idling of vehicles in City parks.

1 NOW, THEREFORE, BE ORDAINED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA AS  
2 FOLLOWS:<sup>1</sup>

3  
4 **Section 1. Recitals.** The above recitals are true and correct, and incorporated herein by this  
5 reference and are hereby adopted as the legislative and administrative findings of the Village Commission.

6  
7 **Section 2. Amendment to the Code.** The Code of Ordinances, Village of Biscayne Park,  
8 Florida, is hereby amended by adding an Article VII to Chapter 11 “Offenses and Miscellaneous  
9 Provisions,” which Article reads as follows:

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11 **CHAPTER 11 - OFFENSES AND MISCELLANEOUS PROVISIONS**

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13  
14 **ARTICLE VII. – PARK RULES AND REGULATIONS**

15  
16 **Sec. . – Definitions.**

17  
18 For purposes of this article, these definitions shall apply:

19  
20 Driver means any driver who drives, operates, or is in actual physical control of a  
21 vehicle.

22  
23 Idle means the operation of a vehicle engine while the vehicle is stationary or not  
24 in the act of performing work or its normal function.

25  
26 Smoking means inhaling, exhaling, burning, carrying, or possessing any electronic  
27 or lighted cannabis or tobacco product, such as cigarettes, cigars, e-cigarettes or vapes, or  
28 pipes.

29  
30 Vehicle means any combustion engine self-propelled vehicle that is required to be  
31 registered and have a license plate by the Florida department of motor vehicles.

32  
33 **Sec. . - Smoking prohibited in parks.**

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35 Smoking cannabis or tobacco products and the use or consumption of cannabis or  
36 tobacco products in parks under the control and management of the village, is prohibited  
37 and unlawful.

38  
39 **Sec. . - Idling of vehicles prohibited in parks.**

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41 No driver, while operating a vehicle at a village park, shall cause or permit a  
42 vehicle’s engine to idle for more than three (3) minutes, except for the following kinds of  
43 idling:

44  
45 (1) Idling while stopped:

46  
47  
48 <sup>1/</sup> Additions to existing text are shown by underline, changes to existing text on second reading are  
49 shown by double underline, and deletions are shown as ~~strikethrough~~.

- (a) For an official traffic control device.
- (b) For an official traffic control signal.
- (c) At the direction of a police officer.
- (2) Idling as needed for the health or safety of a driver or passenger, including police K-9 or other service animals.
- (3) Idling as needed for authorized emergency or law enforcement vehicles to operate equipment.
- (4) Idling as needed for repair, maintenance, or inspection of the vehicle.
- (5) Idling as needed to operate auxiliary equipment for which the vehicle was primarily designed or equipped, such as emergency equipment, refrigeration unit, lift, crane, pump, drill, hoist, or ready mixed equipment, except a heater or air conditioner.

Village employees, including police officers, are authorized to order any driver in violation of this section to move their vehicle off of village park property.

**Sec. . – Enforcement and Penalties.**

- (1) Any violation of this article may be prosecuted in accordance with the provisions set out in section 1-11 of the Biscayne Park Code and Chapter 14 of the Biscayne Park Land Development Code.
- (2) Any village police officer, code enforcement officer, or designated employee are authorized to enforce the provisions of this article.
- (3) Any person who violates any provision of this article, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop any such violation.
- (4) Any person found violating this article after being warned of the violation shall be subject to a fine of up to two hundred fifty dollars (\$250.00) for the first occurrence, and five hundred dollars (\$500.00) for each additional occurrence.

**Section 3. Inclusion in the Code.** The Village Commission intends that the provisions of this Ordinance be made a part of the Biscayne Park Code, and that sections herein may be re-numbered or re-lettered and the words or phrases herein may be changed to accomplish codification.

**Section 4. Conflicts.** Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply. All Ordinances or parts of Ordinances in conflict with this Resolution are hereby repealed to the extent of such conflict.

1 **Section 5. Scrivener's Errors.** Any scrivener or typographical error that does not affect the  
2 intent of this Resolution may be corrected with notice to the Village Attorney, Village Clerk, and Village  
3 Manager without further action or process required.

4  
5 **Section 6. Severability.** If any section, subsection, sentence, clause, or phrase of this  
6 Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid,  
7 such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the  
8 part so declared.

9  
10 **Section 7. Effective Date.** This Ordinance shall become effective upon adoption by the  
11 Village Commission.

12  
13 PASSED AND ADOPTED upon first reading this \_\_\_\_ day of \_\_\_\_\_, 202\_.

14  
15 PASSED AND ADOPTED upon second reading this \_\_\_\_ day of \_\_\_\_\_, 202\_.

16  
17 The foregoing Ordinance was offered by \_\_\_\_\_, who moved its  
18 adoption on second reading. The motion was seconded by \_\_\_\_\_, and upon  
19 being put to a vote the vote was as follows:

20  
21 Johnathan Groth, Mayor \_\_\_\_\_  
22 Veronica Amsler, Vice Mayor \_\_\_\_\_  
23 Art Gonzalez, Commissioner \_\_\_\_\_  
24 Daniel Samaria, Commissioner \_\_\_\_\_  
25 Ryan Huntington, Commissioner \_\_\_\_\_

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28 **VILLAGE OF BISCAYNE PARK**

29  
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31 \_\_\_\_\_  
32 Johnathan E. Groth, Mayor

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34 **ATTEST:**

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36  
37 \_\_\_\_\_  
38 Pamela L. Latimore, Village Clerk

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40  
41 **APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE**  
42 **USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:**

43  
44  
45 \_\_\_\_\_  
46 John R. Herin, Jr./Fox Rothschild, LLP  
47 Village Attorney  
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