VILLAGE OF KEY BISCAYNE

Village Council
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Village Manager
Steven C. Williamson

STAFF MEMORANDUM

DATE: November 17, 2026

TO: Honorable Mayor and Councilmembers

FROM: Steven C. Williamson, Village Manager

RE: Proposed Smoking and Vaping Prohibition in Village Parks and Beaches

RECOMMENDATION

Recommend that the Village Council approve the ordinance prohibiting smoking and vaping in Village owned public parks and associated recreational areas, subject to applicable state law and the exemption for unfiltered cigars.

DISCUSSION

Purpose: To obtain Council approval of the ordinance establishing clear smoking and vaping regulations that protect park users from unwanted exposure to smoke and aerosols and preserve clean, enjoyable recreational spaces.

Background: While the Florida Clean Indoor Air Act (Florida Statutes, §§ 386.201–386.212), restricts smoking and vaping in indoor workplaces and government buildings, § 386.209 of the Florida Statutes, authorizes municipalities to further restrict smoking in public parks and beaches they own, while preserving an exception for unfiltered cigars. The statute also allows more restrictive local regulation of vapor generating devices.

Municipalities that have adopted similar legislation restricting smoking in public parks include Doral, Cutler Bay, Palmetto Bay, Sweetwater, West Miami, Coral Gables, Miami, Miami Beach, Hialeah, North Bay Village, Miami Shores, Opa-locka, Miami Lakes, Bay Harbor Islands, Bal Harbour, Aventura, Sunny Isles Beach, Golden Beach, and Homestead. The scope of these regulations varies, with some applying throughout parks and others covering designated areas or specific parks. Several also expressly prohibit vaping.

Justification: A consistent prohibition would provide clear expectations for residents, visitors, program providers, and enforcement personnel throughout Village parks and beaches. It would also address litter from cigarette butts, cartridges, and disposable devices. Staff recommends a comprehensive approach across covered park areas.

Implementation Plan: Upon adoption, staff will implement the ordinance in accordance with its effective date. Parks, Recreation, and Open Spaces staff will coordinate installation of signs, update park and beach rules, and notify program providers and facility users. Communications staff will assist with public education, and authorized Code Compliance and Police personnel will enforce the ordinance.

RESOURCE IMPACT

Recurring Funding: Routine sign replacement and enforcement would be incorporated into ongoing operations. Any additional funding needs would be identified before implementation.

- **Personnel:** Existing Parks, Recreation, and Open Spaces, Communications, Code Compliance, and Police staff would coordinate implementation, education, and enforcement. No additional positions are proposed.
- **Equipment:** Signs and installation materials would be required. Quantities and costs remain to be determined.
- **Facilities:** Existing public parks and associated recreational areas covered by the ordinance. No construction or facility expansion is proposed.
- **Training:** Brief staff orientation on covered locations, prohibited conduct, applicable exceptions, and enforcement procedures.

FUNDING SOURCES

- **GL Code:** To be confirmed with Finance after signage costs are established.
- **Budget Line Item:** Appropriate existing operating account, subject to confirmation of available funds.
- **Amount:** Signage and installation costs to be determined and addressed through available operating funds, subject to confirmation with Finance.
- **Maintenance & Repair:** Routine inspection and replacement of park signs.

STRATEGIC CONNECTION (GOAL / FOCUS AREA)

This ordinance supports the Village's strategic goal of Engaging and Active Public Spaces and Programs and the objective to improve, maintain and enhance access to parks and public places.

Prepared by: Todd Hofferberth, Director | Parks, Recreation, and Open Spaces Department

Reviewed by Mr. Chad Friedman from Weiss Serota Helfman Cole & Bierman as to form and legal sufficiency.

ORDINANCE NO. 2026-_____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 19, "PARK RULES AND REGULATIONS," OF THE VILLAGE CODE OF ORDINANCES TO CREATE SECTION 19-20, "SMOKE-FREE PARKS AND BEACHES," TO PROHIBIT SMOKING AND VAPING IN VILLAGE PARKS AND BEACHES, SUBJECT TO APPLICABLE STATE-LAW LIMITATIONS; PROVIDING FOR RELATED DEFINITIONS, PROHIBITIONS, SIGNAGE, AND ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council of the Village of Key Biscayne (the "Village") has adopted park rules within the Village under Chapter 19 of the Village Code of Ordinances (the "Code"); and

WHEREAS, the Village Council finds it periodically necessary to amend its Code in order to update regulations to implement goals and objectives and address safety concerns relating to parks within the Village; and

WHEREAS, tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer; and

WHEREAS, more than 480,000 deaths annually in the United States are caused by cigarette smoking, with exposure to secondhand smoke causing an estimated 41,000 deaths each year[1]; and

WHEREAS, exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases; and

WHEREAS, studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking; and

WHEREAS, section 166.021, Florida Statutes, and the Municipal Home Rule Powers Act authorize municipalities to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Chapter 2022-213, Laws of Florida (CS/HB 105), approved by the Governor Ron DeSantis on June 24, 2022, and effective July 1, 2022, is an act relating to the regulation of

[1] Florida House of Representatives, Staff Final Bill Analysis, CS/HB 105, Regulation of Smoking by Counties and Municipalities, at 5 ("Health Concerns") (Mar. 3, 2022) (h0105z.PPH). The Bill Analysis cites, among other sources, America's Health Rankings (adult smoking prevalence); U.S. Department of Health and Human Services, The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General (2014); Centers for Disease Control and Prevention publications on tobacco-related mortality and secondhand smoke; and published studies of secondhand smoke exposure at outdoor locations.

smoking by counties and municipalities that, among other things, amended section 386.209, Florida Statutes, to allow counties and municipalities to restrict smoking in public parks and public beaches under certain circumstances; and

WHEREAS, section 386.209, Florida Statutes, provides that counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks that they own, or that are within its jurisdiction but are owned by the county, except that they may not further restrict the smoking of unfiltered cigars; and

WHEREAS, section 386.209, Florida Statutes, further provides that "[t]his section does not preclude the adoption of county or municipal ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part"; and

WHEREAS, the Village Council finds that regulating smoking- and vaping-related activity in Village parks and beaches serves legitimate municipal purposes, including protecting park users from unwanted exposure to smoke and aerosol, preserving the cleanliness and usability of public recreational spaces, and reducing litter and fire risk; and

WHEREAS, the Village Council desires to adopt clear and enforceable standards governing smoking and vaping in Village parks and beaches in a manner consistent with Chapter 386, Florida Statutes, and other applicable law; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:[2]

Section 1. Recitals. That the above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Amending Chapter 19, "Park Rules and Regulations," of the Village Code. That Chapter 19 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

CHAPTER 19 – PARK RULES AND REGULATIONS

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Section 19-20. Smoke-Free Parks.

(a) Purpose and intent. This section is adopted to protect the public health, safety, and welfare; reduce unwanted exposure to secondhand smoke and aerosol in Village parks; preserve cleaner and more enjoyable recreational spaces; reduce smoking- and vaping-related litter and fire risk; and establish standards that are consistent with Chapter 386, Florida Statutes.

[2] 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.

(b) Definitions. For purposes of this section only, the following terms shall have the meanings set forth below:

Village Park means (i) any publicly owned property or facility under the ownership, control, operation, long-term lease, or management of the Village that is designated, operated, or held out for park, playground, outdoor recreation, or similar public recreational purposes, (ii) public parks that are within the Village's jurisdiction but are owned by the county, including associated parking areas, trails, greenspaces, athletic fields, courts, pavilions, playgrounds, and other park improvements, and (iii) any and all public beaches within the Village's jurisdiction that are owned, controlled, operated, or managed by the Village.

Smoke or Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, lighted cigar, lighted pipe tobacco, lighted hookah product, lighted hemp product, lighted marijuana or cannabis product, or any other lighted plant material intended for inhalation. The term shall be interpreted consistently with applicable provisions of Chapter 386, Florida Statutes.

Unfiltered Cigar means an unfiltered cigar as referenced in section 386.209, Florida Statutes.

Vapor-Generating Electronic Device means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within such device or product.

Vape or Vaping means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance.

Smoking- or Vaping-Related Waste means cigarette butts, cigar tips, ashes, cartridges, pods, disposable devices, packaging, remnants, or other waste materials generated from smoking, vaping, or the use of marijuana, cannabis, tobacco, nicotine, hemp, CBD, THC, or similar products.

(c) Prohibited conduct.

(1) No person shall Smoke in any Village Park.

(2) No person shall Vape or engage in Vaping in any Village Park.

(3) The prohibition in this section applies regardless of whether the substance being smoked or vaporized contains tobacco, nicotine, hemp, CBD, THC, marijuana, cannabis, or any other substance.

(4) Consistent with section 386.209, Florida Statutes, nothing in this section shall be construed to further restrict the smoking of unfiltered cigars in Village parks to the extent such restriction is prohibited by state law.

(d) Disposal of Smoking- and Vaping-Related Waste; signage.

(1) No person shall discard or dispose of Smoking- or Vaping-Related Waste in any Village Park except in a waste receptacle designated or intended for that purpose.

(2) The Village Manager or designee shall cause "No Smoking / No Vaping" signage to be posted at Village Park entrances and at such additional locations as the Village Manager or designee deems appropriate. The absence of a sign shall not constitute a defense to enforcement of this section.

(e) Enforcement; penalties.

(1) This section may be enforced by the Village's code compliance officers, law enforcement officers, and such other officials as may be authorized by law or by the Village Code.

(2) A violation of this section may be prosecuted and remedied through the Village's code enforcement procedures under section 2-31 et seq. of this Code and through any other lawful enforcement mechanism authorized by general law or ordinance.

(3) Any person found in violation of this section shall be subject to the penalties, fines, remedies, and enforcement procedures applicable under section 19-18 of this Chapter and section 2-31 et seq. of this Code, as may be amended from time to time.

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Section 3. **Severability.** That 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. **Codification.** 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 Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. **Conflicts.** That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. **Effective Date.** That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the _____ day of _____, 2026.

PASSED AND ADOPTED on second reading on the _____ day of _____, 2026.

_____
BRETT MOSS
MAYOR

ATTEST:

_____
JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY:

_____
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY