ORDINANCE NO. 12-04

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES ENTITLED "ENVIRONMENT" BY CRREATING SECTION 26-101 PARK RULES TO PROVIDE FOR REGULATIONS CONCERNING ALL CITY PARKS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Key West finds that permitting animals on playing fields within city parks creates a nuisance and health risk as evidenced by the existence of animal waste and holes which present a hazard to public health, safety and welfare of users of the athletic fields; and

WHEREAS, the City of Key West finds that having bicycles in city parks that are not properly racked at designated bicycle racks creates an appreciable tripping hazard to users of city parks and detract from the visual appeal of city parks; and

WHEREAS, the City Commission for the City of Key West finds that the existence of second hand tobacco smoke and cigarette or cigar butts in city parks adversely affects the health and welfare of other users of city parks as well as the environment; and

WHEREAS, the City Commission for the City of Key West finds that because of the shortage of city park benches and tables, said park benches and tables should be used for their intended

purpose so as to allow its use by others; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 26 of the Code of Ordinances is hereby amended as follows*:

Sec. 26-101. Park Rules.

(a) Visitors to all city parks as defined in Sec. 26-96 shall abide by the Park Rules attached as Exhibit A.

(b) The City Commission for the City of Key West can amend the Park Rules by Resolution.

(c) A list of all current rules shall be posted at or near all entrances to all city parks.

(d) Violations of this section are subject to the penalties contained in Sec. 1-15.

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*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 7 day of February, 2012.

Read and passed on final reading at a regular meeting held this 22 day of February, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 23 day of February, 2012.

Filed with the Clerk February 23, 2012.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

EXHIBIT A

PARK RULES FOR ALL CITY PARKS
WITHIN THE CITY OF KEY WEST

1. PARK HOURS 6:00 A.M. TO 11:00 P.M. (Sec.26-100)
2. NO ALCOHOLIC BEVERAGES ALLOWED IN ANY CITY OWNED RECREATIONAL FACILITIES (Sec.26-97)
3. NO UNLEASHED ANIMALS (Sec.10-4)
4. NO ANIMALS, LEASED OR UNLEASHED, ON ANY PLAYING SURFACES (Sec.26-101)
5. ALL BICYCLES MUST BE PROPERLY SECURED TO DESIGNATED BICYCLE RACKS WHEN NOT IN ACTUAL USE. (Sec.26-101)
6. The City encourages individuals to refrain from smoking in City parks. Accordingly, each posted sign shall contain language which reads "Thank You For Not Smoking" (Sec.26-101)
7. NO CAMPING (Sec.62-4)
8. NO LYING ON TABLES AND/OR BENCHES (Sec.26-101)

OFFICE OF THE CITY ATTORNEY

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THE CITY OF KEY WEST

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AMENDED EXECUTIVE SUMMARY

To: The City Commission for the City of Key West
From: Ronald Ramsingh, Assistant City Attorney
Date: February 2, 2012
RE: Park Rules for all city parks

Mr. Mayor and Commissioners:

Background:

I was asked to draft a proposed ordinance revision by Commissioner Johnston to institute new rules as it pertains to all city parks. The proposed new section, 26-101 provides that a list of rules shall be adopted by ordinance and posted at the entrance of all city parks to put the public on notice of these new and existing rules. The new rules consist of the requirement to rack bicycles properly at designated bike racks, to require that users of park benches and tables use them for their intended purposes, that is to say to sit and use the tables and not lay down and occupy the entire bench; thereby preventing other visitors to the parks use of the benches and tables. This rule certainly does not prevent visitors from lying out on the grass if that is their intended use. Another new rule is to prevent any animal, leashed or unleashed onto any *playing surface* within city parks. A complaint from frequent users of the fields is that irresponsible owners of animals (primarily dogs) allow them to defecate on playing fields and courts without proper disposal. In addition, animals that dig holes on these fields create conditions where unsuspecting users of the fields can injure themselves while engaged in athletic activities. Dogs that are leached

will still be allowed in city parks consistent with the city's existing ordinances. Finally, the last new rule concerns tobacco smoke in public parks. Cities such as New York, St. Louis, Vancouver, numerous cities in California and others have bans in place citing concerns of second hand smoke in areas where unsuspecting people; and especially children, congregate and recreate. The consensus thus far is that there is not a constitutionally protected right to smoke on a federal level, though there are pending challenges in various state and federal courts (NY and OH) to challenge this relatively new area of regulation. Florida, however prevents localities from enacting ordinances regarding tobacco use through preemption under FL Statute §386.09. The recommendation here will be to discourage visitors to city parks from smoking, but not specifically ban it.

Violations of any of the rules is punishable by Sec 1-15, which essentially makes violations second degree misdemeanors with potential exposure of a fine up to $500.00 and/or jail up to 60 days; which is prescribed by state law.

Options:

1. To pass the proposed ordinance revision, thereby instituting the aforementioned new rules for all city parks that will be posted at the entrances of all parks along with existing rules.
2. To defeat the proposed revision and the existing rules will continue to be enforced.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Ron Ramsingh
Assistant City Attorney
809-3775