

ORDINANCE NO. 23-08

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,
AMENDING CHAPTER 30, BY REPEALING DIVISION 11 – ALCOHOLIC
BEVERAGE USE PERMITS; PROVIDING FOR THE REPEAL OF ALL CODE
PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS
ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF
THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON
APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF
ECONOMIC OPPORTUNITY.**

WHEREAS, pursuant to Village Code Chapter 30, Article VI, Division 11 (Alcoholic Beverage Use Permit), Islamorada, Village of Islands regulates the sale and consumption of alcoholic beverages; and

WHEREAS, THE State of Florida already provides for the licensing of businesses which involve the sale and consumption of alcoholic beverages; and

WHEREAS, Islamorada, Village of Islands provides adequate and proper regulation for businesses which involve the sale and/or consumption of alcoholic beverages; and

WHEREAS, the repeal of Chapter 30, Article VI, Division 11 (Alcoholic Beverage Use Permit) is in the public interest.

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 incorporated herein by this reference.

Section 2. Chapter 30, Article VI, Division 11 (Alcoholic Beverage Use Permit) is deleted in its entirety.

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

DIVISION 11. - ALCOHOLIC BEVERAGE USE PERMIT⁽¹⁵⁾

Footnotes:

—(15)—

Cross reference—Noise permit; alcoholic beverages permit, § 42-42.

Sec. 30-1461. Generally.

(a) *Purpose and intent.* This section is designed and intended to provide for reasonable regulations and control over the production, manufacture, brewing and/or sale of alcoholic beverages within the village by establishing an alcoholic beverage use permit procedure and providing criteria to be utilized to assure that all future proliferation of alcoholic beverage use enterprises within the village are compatible with adjoining and surrounding land uses and the village's comprehensive plan, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact on the health, safety and welfare of the citizens and residents of the village.

(b) *Permit required.* All persons desiring to produce, manufacture, brew and/or sell alcoholic beverages upon any premises located within the village and who desire to do so upon premises not previously approved for an alcoholic beverage use permit shall

~~obtain an alcoholic beverage use permit utilizing the procedures outlined in subsection (d) of this section.~~

~~(c) *Classifications.* Corresponding to those alcoholic beverage license classifications adopted by the state, as may be amended from time to time, alcoholic beverage use permits issued pursuant to this division shall be classified as follows:~~

- ~~(1) 1APS: Beer, package sales only.~~
- ~~(2) 1COP: Beer, consumption on premises and package sales.~~
- ~~(3) 2APS: Beer and wine, package sales only.~~
- ~~(4) 2COP: Beer and wine, consumption on premises and package sales.~~
- ~~(5) 3BPS: Beer, wine and liquor, package sales only.~~
- ~~(6) 5COP: Beer, wine and liquor, consumption on premises and package sales.~~
- ~~(7) 5COP SRX: Restaurant, no package sales.~~
- ~~(8) 5COP SR: Restaurant, package sales.~~
- ~~(9) 5COP S: Motel, package sales.~~
- ~~(10) 5COP SBX: Bowling, no package sales.~~
- ~~(11) 5COP SPX: Boat, no package sales.~~
- ~~(12) CMB: Manufacturer/brewer of malt beverages.~~

~~(d) *Procedure.* The following procedures shall be followed on any application for an alcoholic beverage use permit:~~

- ~~(1) Applications for alcoholic beverage use permits shall be submitted in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by a fee as established from time to time by the village council to defray the actual cost of processing the application. After an application is submitted, the director of planning and development services shall determine if the application is complete and includes data necessary to evaluate the application. Applications shall be~~

reviewed in accordance with the applicable provisions of article IV, division 2 of this chapter.

(2) The director of planning and development services shall ensure that the necessary public hearing is scheduled for the decision-making or advisory body reviewing the application and that, except as provided herein, proper notice of the public hearing is provided as set forth herein. All notices for public hearings shall include the information required pursuant to [section 30-213](#).

(3) The director of planning and development services shall provide written notice to all owners of real property within a radius of 500 feet of the affected premises, posting of the property subject to the application, and by publication pursuant to the procedures provided by [section 30-213\(l\)](#).

(4) The public hearing shall be conducted in accordance with article IV, division 3 of this chapter.

(e) *Proximity to places of worship, schools and child care facilities.*

(1) No person shall conduct any business involving the production, manufacture, brewing or sale of alcoholic beverages within three hundred feet of any established place of worship, school and/or child care facility. Such distance shall be measured from the nearest point of the property line of the place of business to the property line of the place of worship, school and/or child care facility and used as a part of the place of worship, school and/or child care facility. However, any person or property licensed to conduct and legally conducting a business involving the production, manufacture, brewing or sale of alcoholic beverages as of the effective date of this amendment, shall be governed by the provisions of this section which existed at the time of the original licensure of such business. This prohibition shall not apply to temporary alcohol beverage use permits.

(2) When considering an application for a variance from the proximity requirement in subsection (1), the director and village council shall consider the following criteria:

- a. The license sought is for consumption on premises only;
- b. The extent of conflict between the proposed use and the hours of operation of the facilities described in subsection (1) above;
- c. Other nonresidential uses adjacent to or between the property of the proposed alcohol beverage use permit and the facilities described in subsection (1) above; and
- d. The property of the proposed alcohol beverage use permit is separated from the facilities described in subsection (1) above by a canal, channel or creek.

Public notice shall be provided consistent with Code [section 30-213\(l\)](#).

(f) *Criteria.* The village council shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:

- (1) The proposed use is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development as represented by property owners within 500 feet of the premises;
- (2) The proposed use is consistent with the purposes, goals, objectives and policies of the comprehensive plan and this chapter, including standards for building and structural intensities and densities, and intensities of use; and the suitability of the premises in regard to its location, site characteristics and intended purpose;
- (3) The proposed use complies with article IV, division 5 of this chapter (Concurrency Management); and
- (4) The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

~~(g) Approval by village council.~~ The village council may grant approval based on reasonable conditions considering the criteria outlined herein.

~~(h) Where permitted.~~ Alcoholic beverage use permits may be granted in the following zoning districts: village center (VC); tourist commercial (TC); marine use (MR); highway commercial (HC); industrial (I) and neighborhood commercial (NC). Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the zoning district in which they are located. Nothing contained herein shall exempt an application from obtaining a major or minor conditional use approval when such is otherwise required by this chapter.

~~(i) Transferability.~~ Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property which has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the application. Such privilege may not be separated from the fee simple interest in the realty.

~~(j) Appeals.~~ The applicant, or any aggrieved person who has opposed the issuance of the alcoholic beverage permit at the scheduled public hearing, may appeal the decision of the village council by filing a petition for writ of certiorari in the circuit court in and for the county, in accordance with the procedure provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure, within 30 days of the date of the decision by the village council.

~~(Ord. No. 03-05, § 1(6.10.1), 3-27-2003; Ord. No. 15-03, § 2, 2-12-15)~~

Secs. 30-1462—30-1479. - Reserved.

Section 3. Transmittal. The Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Economic Opportunity (the "DEO") for approval pursuant to section 380.05, Florida Statutes.

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. Effective Date. This Ordinance shall not be effective immediately upon adoption. The Amendment shall not take effect until the date a final order is issued by the DEO. The DEO notice of intent to find the Amendment in compliance shall be deemed to be the final order if no timely petition challenging the Amendment is filed.

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

PASSED on the first reading this 18th day of May, 2023.

The foregoing Ordinance was offered by Mark Gregg, who moved for its adoption on second reading. This motion was seconded by Sharon Mahoney, 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>
Councilman Henry Rosenthal	<u>No</u>
Councilwoman Elizabeth Jolin	<u>No</u>

PASSED AND ADOPTED on the second reading this 20 day of July, 2023.

Joseph B. Pinder
JOSEPH B. PINDER, MAYOR

ATTEST:

Marne McGrath
MARNE MCGRATH, VILLAGE CLERK

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

John J. Quick
JOHN J. QUICK, INTERIM VILLAGE ATTORNEY



Published 9/21/23
Eff Date 10/12/23
Update LDR's

STATE OF FLORIDA
DEPARTMENT OF COMMERCE

In re: AMENDMENT TO THE ISLAMORADA, VILLAGE
OF ISLANDS, FLORIDA, LAND DEVELOPMENT
REGULATIONS ADOPTED BY ORDINANCE NO. 23-08

FINAL ORDER
APPROVING ISLAMORADA, VILLAGE OF ISLANDS
ORDINANCE NO. 23-08

The Department of Commerce (“Commerce”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the Islamorada, Village of Islands, Florida (“Village”), by Ordinance No. 23-08 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by Section 380.0552, Florida Statutes, as an area of critical state concern. The Village is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the Village on July 20, 2023 and rendered to Commerce on August 1, 2023.
3. The Ordinance amends the Village’s Code by repealing Chapter 30, Article VI, Division 11 – *Alcoholic Beverage Use Permit* in its entirety.

CONCLUSIONS OF LAW

4. Commerce is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.

5. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the Village's Comprehensive Plan generally, as required by Section 163.3177(1), Florida Statutes, and is specifically consistent with Goal 1-1, Objective 1-1.1, Objective 1-3.1, Goal 8-1, Objective 8-1.4, and Policy 8-1.4.1.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See Section 380.05(6), Florida Statutes. The Principles for Guiding Development for the Village are set forth in Section 380.0552(7), Florida Statutes.*

8. The Ordinance is consistent with the Principles for Guiding Development for the Village as a whole, and specifically furthers the following Principles:

(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

(h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;
2. Sewage collection, treatment, and disposal facilities;
3. Solid waste treatment, collection, and disposal facilities;
4. Key West Naval Air Station and other military facilities;
5. Transportation facilities;
6. Federal parks, wildlife refuges, and marine sanctuaries;
7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
8. City electric service and the Florida Key Electric Co-op; and
9. Other utilities, as appropriate.

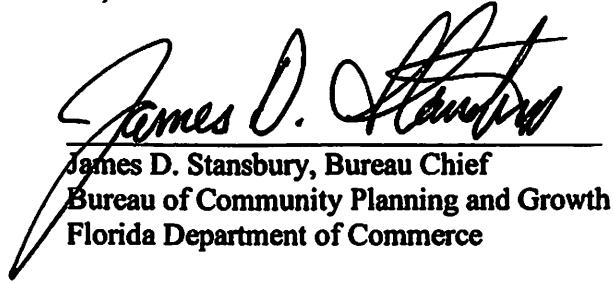
(k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that Ordinance No. 23-08 is consistent with the Village's Comprehensive Plan and the Principles for Guiding Development for the Village and is hereby APPROVED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



James D. Stansbury
Bureau of Community Planning and Growth
Florida Department of Commerce

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE FLORIDA DEPARTMENT OF COMMERCE WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
FLORIDA DEPARTMENT OF COMMERCE
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 20th day of September, 2023.

Karis De Gannes
Agency Clerk
Florida Department of Commerce
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

Joseph "Buddy" Pinder, Mayor
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

Marne McGrath, Village Clerk
Islamorada, Village of Islands
86800 Overseas Highway
Islamorada, FL 33036

Jennifer DeBoisbriand, Planning Director
Planning and Development Services
86800 Overseas Highway
Islamorada, FL 33036