

**ORDINANCE NO. 23-10**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM, WITHIN THE VILLAGE, ON THE ACCEPTANCE OF NEW MARKET RATE RESIDENTIAL BUILDING PERMIT ALLOCATION SYSTEM (BPAS) APPLICATIONS (WITH OR WITHOUT LAND DEDICATIONS); PROVIDING FOR EXEMPTIONS; PROVIDING FOR PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW; PROVIDING FOR A TERM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMERCE; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMERCE.**

**WHEREAS**, in 1972, the Florida Legislature adopted the Environmental Land and Water Management Act, which provided the basis for the state to designate an Area of Critical State Concern (“ACSC”). To be designated, an area must contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources; and

**WHEREAS**, in 1975, the Florida Legislature designated the Florida Keys (Monroe County and its municipalities) as an Area of Critical State Concern. The Florida Keys received this designation due to the area’s environmental sensitivity and mounting development pressures. The legislative intent was to establish a land use management system for the Florida Keys that would: Protect the natural environment and improve the near shore water quality; Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities; Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated; Provide affordable housing near places of employment; and Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction; and

**WHEREAS**, Section 380.05, Florida Statutes, allows the Florida Administration Commission to designate areas that contain resources of statewide significance as an ACSC; and

**WHEREAS**, the Florida Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive plans and land development regulations; and

**WHEREAS**, Section 380.0552(4), Florida Statutes, directs the state land planning agency to submit a report to the Florida Administration Commission, describing in detail the progress of the Florida Keys Area of Critical State Concern toward accomplishing the tasks of the Work Program and to provide a recommendation as to whether or not progress toward accomplishing the tasks of the Work Program has been achieved; and

**WHEREAS**, the state land planning agency is required by Section 380.0552(4)(b), Florida Statutes, to submit a written report annually to the Florida Administration Commission describing the progress of the Florida Keys ACSC toward completing the Work Program tasks “specified in commission rules”; and

**WHEREAS**, access to and from the Keys is primarily by U.S. Highway 1. Evacuation of the Keys’ population in advance of a hurricane strike is essential for public safety. No hurricane shelters are available in the Florida Keys for Category 3-5 hurricane storm events. A system of managed growth was developed to ensure the ability to evacuate within the 24-hour evacuation clearance time as required by Section 380.0552(9)(a)2., Florida Statutes; and

**WHEREAS**, as part of the overall evacuation strategy, the Florida Administration Commission adopted a building permit allocation system that caps the number of permits that can be issued for new residential structures. Based on existing infrastructure and evacuation strategies,

computer modeling indicates that the projected maximum build out for the Florida Keys is the development of an additional 3,550 allocations beginning July 2013, with a portion of these allocations set aside for affordable housing; and

**WHEREAS**, the ten-year building permit allocation expired in July 2023. The Florida Division of Emergency Management (“DEM”) is currently working to update the hurricane evacuation model for the entire state. DEM staff is coordinating with state land planning agency staff on the timing of that update and its availability to perform modeling to advance a new ten-year allocation. The ten-year permit allocation system was designed to coordinate with the timing of the release of decennial census data; and

**WHEREAS**, during the rule promulgation process, it became apparent that the COVID-19 pandemic may influence the 2020 Census and the timing of the data releases. Therefore, the update of the work program tasks for hurricane evacuation and a revised building permit allocation was deferred until there was clarity as to the effect of COVID-19 on the 2020 Census. As data gathering efforts in this area are finalized, the Department will bring recommendations with regard to updating the components of hurricane evacuation and building permit allocations; and

**WHEREAS**, Islamorada, Village of Islands (“Village”) has adopted a comprehensive set of Land Development Regulations (“LDRs”) to implement the Village Comprehensive Plan; and

**WHEREAS**, residential development is currently regulated pursuant to the Village Comprehensive Plan and LDRs; and

**WHEREAS**, the Village previously adopted the Building Permit Allocation System (“BPAS”), thus allowing the Village to regulate growth by issuing a limited number of market rate and affordable residential building permits; and

**WHEREAS**, the Village Council desires to further study, modify and implement comprehensive regulations concerning future residential development, so that the public safety is protected and the aesthetic and visual qualities of the Village are protected from impairment by future residential development; and

**WHEREAS**, the Village Council desires to ensure that during the pendency of the necessary study activity for the formulation and implementation of more comprehensive regulations of future residential development, that the acceptance of new Market Rate Residential BPAS applications (with or without land dedications) are not initiated, so that the regulations produced by the Village's study activity would be fully effective; and

**WHEREAS**, the acceptance of new Market Rate Residential BPAS applications (with or without land dedications) stimulates an accelerated amount of development permit request(s). If approved, such accelerated development would lead to further deterioration of current hurricane evacuation clearance time for the Village. This would increase the existing potential for loss of life and injury to persons and property and would cause further deterioration in the level of service on existing roadways, and would lead to irreversible environmental degradation; and

**WHEREAS**, the acceptance of new Market Rate Residential BPAS applications (with or without land dedications) and implementation of more comprehensive regulations concerning future residential development would cause immediate harm to the health, safety and welfare of the residents of the Village; and

**WHEREAS**, the utilization of the moratorium device as a temporary measure to facilitate governmental decision-making, study, and the adoption of comprehensive plan amendments

and/or land development regulations is a legitimate governmental tool to facilitate logical and considered growth and as a means of avoiding inefficient and ill-conceived development; and

**WHEREAS**, the Village Council finds that it necessary to impose a temporary moratorium on the acceptance of new Market Rate Residential BPAS applications (with or without land dedications); and

**WHEREAS**, the Village Local Planning Agency has reviewed this Ordinance at a properly noticed public hearing on September 11, 2023; and

**WHEREAS**, after due notice and hearing, the Village Council finds that this Ordinance is consistent with the Village Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern; and

**WHEREAS**, the Village Council finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the residents of the Village.

**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 are incorporated herein by this reference.

**Section 2.**    **Moratorium Imposed.** During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a temporary moratorium on the acceptance of new Market Rate Residential BPAS applications (with or without land dedications).

**Section 3.**    **Exemptions.** This Ordinance shall not prohibit the acceptance of new Affordable Residential BPAS applications, new Nonresidential BPAS applications, administrative relief applications, and transfer of development right applications.

**Section 4. Determination of Vested Rights or Denial of All Economic Use.**

a. Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- i. A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- ii. Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
- iii. That it would be highly inequitable to deny the property owner the right to complete the development.

b. Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

c. Any property owner claiming vested rights or denial of all use under this Section 5 must file an application with the Village Council for a determination within 45 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Village and other documentary evidence supporting the claim. The Village Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

**Section 5. Judicial Review.** Judicial review of final decisions by the Village Council under Section 4 of this Ordinance shall be by the filing of a Petition for Writ of Certiorari in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, in accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of

municipalities.

**Section 6.      Exhaustion of Administrative Remedies.** No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in this Ordinance.

**Section 7.      Term.** The moratorium imposed by this Ordinance is temporary and shall be effective for a period of six (6) months from the effective date of this Ordinance, unless dissolved earlier by the Village Council. The moratorium may be reasonably extended, if necessary, by Ordinance of the Village Council.

**Section 8.      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 9.      Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 10.      Approval by the State Department of Economic Opportunity.** The provisions of this Ordinance constitute a “land development regulation,” as defined by Section 380.031, Florida Statutes. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Commerce for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 11. Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Commerce, pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance was offered by Mark Gregg, who moved for its adoption on first 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	Yes
Vice Mayor Sharon Mahoney	Yes
Councilman Mark Gregg	Yes
Councilwoman Elizabeth Jolin	No
Councilman Henry Rosenthal	No

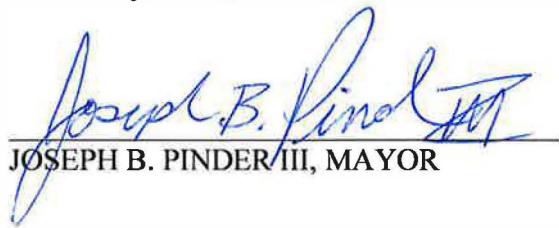
**PASSED** on the first reading this 21 day of September, 2023.

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The foregoing Ordinance was offered by Mark Gregg, and seconded by Sharon Mahoney, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	Yes
Vice Mayor Sharon Mahoney	Yes
Councilman Mark Gregg	Yes
Councilwoman Elizabeth Jolin	No
Councilman Henry Rosenthal	No

**PASSED AND ADOPTED** on the second reading this 9th day of November, 2023.



JOSEPH B. PINDER III, 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



AS  
ALISON SMITH, WEISS SEROTA -  
ACTING VILLAGE ATTORNEY



**STATE OF FLORIDA  
DEPARTMENT OF COMMERCE**

In re: AMENDMENT TO THE ISLAMORADA, VILLAGE  
OF ISLANDS, FLORIDA, LAND DEVELOPMENT  
REGULATIONS ADOPTED BY ORDINANCE NO. 23-10

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**FINAL ORDER APPROVING ISLAMORADA, VILLAGE OF ISLANDS  
ORDINANCE NO. 23-10**

The Department of Commerce (“Department”) 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. 23-10 (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 November 9, 2023, and rendered to the Department on November 15, 2023.

3. The Ordinance amends the Village’s Code to institute a temporary, six-month moratorium on the acceptance of new Building Permit Allocation System (BPAS) applications for market-rate residential building permits. The Ordinance specifies that the moratorium does not prohibit the acceptance of new BPAS applications for permits for affordable residential or nonresidential units, administrative relief, and transfer of development rights.

4. The Ordinance also provides a process for property owners to obtain a determination from the Village Council as to whether the moratorium abrogates the owners’ vested rights or denies all economic use of their property.

## CONCLUSIONS OF LAW

5. The Department 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.*

6. “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.

7. 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, Goal 1-3, Objective 1-3.1, Policy 1-3.1.1, and Goal 3-1.

8. 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.*

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

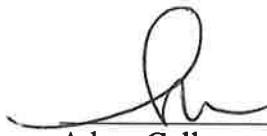
- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.

- (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
- (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. 23-10 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.



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Adam Callaway  
Chief of Staff  
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  
AGENCY.CLERK@COMMERCE.FL.GOV  
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 12<sup>th</sup> day of January, 2024.

  
Kris D. Ganns  
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