

ORDINANCE NO. 24-11

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,
AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS",
ARTICLE IV "ADMINISTRATIVE PROCEDURES", DIVISION 2
"DEVELOPMENT REVIEW PROCESS", SECTION 30-212 OF THE VILLAGE
CODE TO CREATE A REVIEW FOR THE IMPOSITION OF CERTAIN
CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE CODE; 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, Islamorada, Village of Islands (the "Village") has established Land Development Regulations ("LDRs") to properly guide development and protect the health, safety, and welfare of the public; and

WHEREAS, the Village Council desires to amend existing provisions under Division 2, "Development Review Process" of Article IV of the Village's LDRs relating to provisions generally governing the development process; and

WHEREAS, specifically, the Village Council desires to amend Section 30-212, "Generally", of the Village Code to provide for a process to review certain conditions imposed on a development; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development within 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 citizens 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. Amendments to the Code.

(a) Chapter 30 entitled "Land Development Regulations", is hereby amended to create and new subsection (f) and to re-letter the subsequent subsections thereafter in Section 30-212, as follows:¹

ARTICLE IV. – Administrative Procedures.

DIVISION 2. – Development Review Process

Sec. 30-212. Generally.

(a) *Development permits required.* No development shall take place within the jurisdiction of the village except after issuance of all development permits required under any applicable section of this chapter, the Code or village ordinance, and other governmental agencies having jurisdiction to regulate the development of land within the village's jurisdiction.

(b) *Development by governmental agencies.* Prior to undertaking development, any governmental agency shall apply for the appropriate permit under the applicable sections of this chapter, the Code or village ordinance. If any governmental agency seeking to undertake development has been specifically exempted by federal or state law from compliance with this chapter, the Code or village ordinance, the agency shall file with the village manager and director of planning and development services evidence of such exemption. In the absence of such an exemption, governmental agencies shall apply for permits in the same manner as other persons.

(c) *Technical codes.* The building, plumbing, electrical and other technical codes adopted by the village are expressly recognized as essential to the implementation of the village comprehensive plan and this chapter.

(d) *Application for development.*

(1) Every application for a development permit shall be in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by a fee as is 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. The village shall be entitled to rely upon the statements or representations made by the applicant on a development permit application. If

¹ / 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.

it is determined that the application is incomplete, or based upon incomplete or inaccurate information or misstatements of fact, notice shall be delivered to the applicant specifying the deficiencies. The director shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 20 working days, the application shall be considered withdrawn. If or when the application is determined complete, it shall be reviewed in accordance with the applicable provisions of this chapter. Notwithstanding anything in this chapter to the contrary, on a case-by-case basis, the director may make a written determination to waive some or all of the required submittals of a development permit application. Annually, the director shall promulgate a calendar, as may be amended, showing application dates and deadlines consistent with the specifications of this chapter. This calendar shall govern all dates and the development review process.

(2) All applications shall include proof of ownership and, if applicable, consent to be represented by an agent. All owners and any person having a contractual interest in the land shall give their permission for application. Unless otherwise specified in each section describing particular development review procedures, applications for development permits require a concurrency certification by the planning and development services department prior to being placed on the agenda for a public hearing or meeting or proceeding to the subsequent step in the development review process. Unless requested by the village, applications shall not be significantly altered after certifications. In no case shall any changes be made to a development application or development plans within ten working days of any required public hearing on the application, without a continuance of the hearing.

(3) The director shall be entitled to a continuance, and an applicant shall be entitled to a continuance or withdrawal of an application for development permit if the request is made no later than five working days before final action on the application by the decision-making body or person. Requests for a continuance or withdrawal received later than five working days before the date the decision is to be made, or the public hearing is to take place, shall be granted only by the decision-making body or person with or without prejudice. Applicants in this case shall not be entitled to the return of application fees.

(4) Whenever any application for a development permit is withdrawn or denied with prejudice, an application for development permit for all or part of the same land shall not be considered for a period of one year after the date of denial, unless the subsequent application involves a development proposal that is materially different from the prior proposal, or unless the person or a majority of the members of the decision-making body that made the final decision on the application determines that the prior denial was based on a material mistake of fact. For the purpose of this subsection, an application for development permit shall be considered materially different if it involves a change in use, or a change in intensity or density of use of 25 percent or more. The body or person charged with conducting the initial development application review or public hearing under such successive application shall resolve any questions concerning the similarity of a second application.

(5) To the extent practical, applications for development permits may be consolidated for review pursuant to an agreement between the applicant and the director as part of the pre-application conference. When applications for development permits are consolidated

pursuant to this subsection, the time for review shall be no less than those established for the application for development permit with the longest review period.

(6) The director and village council may impose such conditions on the granting of a development permit that are necessary to accomplish the purposes of the comprehensive plan and this chapter. Conditions shall be included if conventional standards are inadequate to protect the public interest and surrounding land uses or if additional improvements are needed to facilitate a more appropriate transition between different uses. Conditions are not intended to restate express provisions of this chapter. Such conditions may include the execution of unity of title and the location of uses on the site to minimize adverse off-site impacts and ensure on-site safety. Further, conditions may be imposed to provide road construction required for the project to meet village concurrency requirements and that allow the applicant to proceed to the subsequent stage of development review. Site-related conditions such as drainage improvements, turn lanes and signalization may be imposed. Conditions shall be reasonable, not be contrary to law and shall be limited to on-site impacts, except for off-site public road improvements or other conveyances reasonably related and proportionate to the project's impact. Conditions shall not amend village council imposed conditions or affect previously approved conditions. For modifications or additions to previously approved site plans, conditions shall only be imposed to address the specific impacts of the new use or development. Fixed times may be set for compliance with conditions and shall be governed by section 30-224.

(7) Any application for development permit may be suspended during the pendency of a code enforcement proceeding or for any code violation involving all or a portion of the land proposed for development. Development permit applications for properties that have outstanding code violations, liens or fines owed to the village shall be restricted as follows:

- a. The village shall not approve a final site plan or building permit until the code violation is remedied and payment of outstanding liens or fines is made to the village.
- b. The village may approve a conditional use application; however, it shall not do so unless, as a condition of approval, the code violation is remedied and the applicant agrees to the payment of all outstanding liens or fines by a date certain or prior to a specific event.
- c. In the event litigation contesting the code violation or the validity of the lien or fine is initiated before the application for the development permit, the time for compliance or payment shall be established only after the conclusion of litigation.

(e) *Violation of permit condition or time limitation.* A violation of any condition or time limitation of any development permit shall be considered a violation of the Code. The violation shall be corrected prior to any public hearing or meeting on the issuance of any subsequent development permit for that project, unless a subsequent permit application seeks to amend the condition or time limitation that has been violated. Unless otherwise specified in the development permit, an approved use must comply with conditions and time limitations before implementing the approval, or before

receipt of a certificate of occupancy or certificate of completion. The violation shall be subject to all enforcement procedures available as provided in the Code and by all applicable laws and ordinances.

(f) Review of conditions imposed.

(1) The term "Condition" as used in this subsection (f) includes only the following conditions, whether imposed by the Director of the Village land development regulations:

- a. Dedication requirements (land, public improvements, etc.); or
- b. Impact fees; or
- c. Other monetary exactions.

(2) If an applicant believes that any Condition imposed on a development does not have a nexus to a legitimate public purpose and/or is not roughly proportionate to the impacts of the proposed development, the applicant shall, as part of its development application, provide empirical evidence of its position. Where appropriate, the applicant should present an expert report on rough proportionality with its application. If the Director has the authority to does not excuse the applicant from the Condition and does not do so, the applicant shall raise the issue before the Village Council as provided by the application process for the particular development approval that the applicant is seeking. The Village Council shall be the final arbiter of whether the condition should be imposed. For applications that are reviewed and approved by the Village Council as authorized by Section 30-81 of the Village Code, the challenge to the Condition, including the provision of empirical evidence challenging the Condition, must be presented concurrently with its application. For applications that are reviewed and approved by the department of planning and development services as authorized by Section 30-131 of the Village Code, the challenge to the Condition, including the provision of empirical evidence challenging the condition, must be presented no later than the time within which the applicant must appeal the decision on the application to the Village Council. Any challenge to a Condition that is not made within the time frames provided in this section is deemed waived. Any empirical evidence, including expert reports, prepared by the applicant shall be provided to the Village Council in advance of the hearing.

Upon hearing the evidence presented by the applicant and any testimony by the Director and/or the Director's designee on why the condition was imposed, the Village Council may excuse the applicant from complying with the condition if it finds that:

- a. The condition does not have an essential nexus to a legitimate public purpose; or
- b. The condition does not actually further the legitimate public purpose; or
- c. The condition is not roughly proportionate to the impacts of the development.

However, nothing in this section shall be interpreted as permitting the Village Council to take any action that is inconsistent with the Comprehensive Plan.

(f)(g) Fraud or omission in permit application. If there is evidence that an application for development permit was considered wherein there was misrepresentation, fraud, deceit, or a deliberate error or omission, the village may initiate a rehearing to reconsider the development permit. The village may re-approve, approve with new conditions, deny, or take such other action on the development permit at the rehearing based on the standards in this chapter. If evidence of misrepresentation is discovered during the application review and approval process, the application shall be deemed incomplete and returned to the applicant.

(g)(h) Development permits that are never implemented. All development permits that are never implemented shall be either:

- (1) Rescinded simultaneously with issuance of a subsequent development permit;
- (2) Revoked after a public hearing; or
- (3) Rescinded upon the expiration of the permit as set forth in table 30-225.

Section 3. Repeal of Conflicting Provisions. The provisions of the Village of Islamorada Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any sentence, section, 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 sentences, sections, clauses or phrases of the 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. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Village of Islamorada Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.²

² / Ordinance 24-05 was approved by the Village Council on January 11, 2024 and added a subsection (h) entitled "Zoning in progress, hold on permits or certificate of uses." At the time of preparing this draft, that Ordinance has not yet received final approval from the Department of Commerce. As a result, that subsection could not be included as part of

Section 6. Transmittal. The Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Commerce (the "DOC") for approval pursuant to section 380.05, Florida Statutes.

Section 7. 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 DOC. The DOC notice of intent to find this Ordinance in compliance shall be deemed to be the final order if no timely petition challenging this Ordinance is filed.

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	Yes

PASSED on the first reading this 14 day of March, 2024.

[Remainder of this page intentionally left blank]

Section 30-212 herein. However, if/when Ordinance 24-05 received final approval and if/when this Ordinance is fully approved, subsection (h) from Ordinance 24-05 should also be re-lettered as subsection (i).

The foregoing Ordinance was offered by Mark Gregg, who moved for its adoption on second reading. This motion was seconded by Henry Rosenthal, 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	Yes

PASSED AND ADOPTED on the second reading this 11th day of April, 2024.



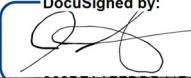
JOSEPH B. PINDER III, MAYOR

ATTEST:

DocuSigned by:

009BA0A0B2704D5...
MARNE MCGRATH, VILLAGE CLERK

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

DocuSigned by:

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JOHN J. QUICK, VILLAGE ATTORNEY



STATE OF FLORIDA
DEPARTMENT OF COMMERCE

In re: AMENDMENT TO THE ISLAMORADA, VILLAGE
OF ISLANDS, FLORIDA, LAND DEVELOPMENT
REGULATIONS ADOPTED BY 24-11

FINAL ORDER
APPROVING ISLAMORADA, VILLAGE OF ISLANDS ORDINANCE NO. 24-11

The Florida 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 (the “Village”), Ordinance No. 24-11 (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 April 11, 2024, and rendered to the Department May 31, 2024.

3. The Ordinance amending Chapter 30 *Land Development Regulations*, Article IV *Administrative Procedures*, Division 2 *Development Review Process*, Section 30-212 of the Village Code to create a new subsection (f), entitled *Review of Conditions Imposed*.

4. The Ordinance creates a process for reviewing conditions imposed on a development permit such as dedication requirements, drainage improvements, impact fees or other monetary exactions. The review process enables an applicant to present evidence to the Village Council if the applicant believes that the conditions imposed on a proposed development do not serve a legitimate public purpose or are not proportional to the impacts of the proposed development. After reviewing the evidence and considering input from the Director, Ordinance

authorizes the Village Council to choose whether to waive the imposed conditions for the applicant.

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 as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Goal 1-1, Policy 1-4.2.1, and Policy 3-1.7.2.

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.*

9. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in Section 380.0552(7), Florida Statutes.

10. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes and is specifically consistent with 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.
- (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 the Ordinance No. 24-11 is consistent with the Village's Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern 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.



Kate Doyle, Assistant Deputy Secretary
Division of Community Development
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.

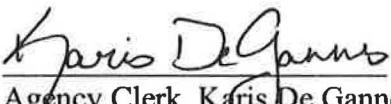
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE FLORIDA DEPARTMENT OF COMMERCE WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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
AGENCY.CLERK@COMMERCE.FL.GOV

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 29th day of July 2024.



Karis De Gannes
Agency Clerk, Karis De Gannes
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