

ORDINANCE NO. 25-11

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING SECTION 2-118 OF THE VILLAGE CODE, ENTITLED "SCHEDULING AND CONDUCT OF HEARING," TO REQUIRE NOTICE OF AFFIRMATIVE DEFENSES IN CODE COMPLIANCE HEARINGS AND DETERMINATION OF RESPONSIBILITY FOR ALLEGED VIOLATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to section 162.03, Florida Statutes, a local governing body such as the Village of Islamorada (the "Village") may adopt by ordinance a code enforcement system to hold hearings and assess fines against violators of municipal codes and ordinances; and

WHEREAS, the Village has adopted a code enforcement system under Article 2-III of Chapter 2 of the Village Code of Ordinances, including procedures for hearings to adjudicate alleged violations of the Village Code of Ordinances; and

WHEREAS, the Village desires to improve its code compliance hearing procedures by amending section 2-118 of the Code to require the submittal of affirmative defenses to the Village and hearing officer prior to the hearing on the case at issue; and

WHEREAS, the Village Council finds that the amendment as proposed herein is in the best interest of the Village and its residents.

**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. Amendment to the Code. Section 2-118, entitled "Scheduling and Conduct of Hearing," is hereby amended to read as follows: ¹

**CHAPTER 2 ADMINISTRATION
ARTICLE 2-III CODE COMPLIANCE
DIVISION 2-III-2 ADMINISTRATION AND ENFORCEMENT**

Sec 2-118 Scheduling And Conduct Of Hearing

- (a) Upon receipt of a written hearing request from the code compliance officer as provided for in section 2-115, the manager or his designee shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.
- (b) The manager or his designee shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:
 - (1) Name of the code compliance officer who issued the notice.
 - (2) Factual description of the alleged violation.
 - (3) Date of the alleged violation.
 - (4) Section of the Code allegedly violated.
 - (5) Place, date and time of the hearing.
 - (6) Notice of the right of the violator to be represented by an attorney.
 - (7) Right of the violator to present evidence and witnesses and to cross examine witnesses.

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.

- (8) Notice that failure of the violator to attend the hearing may result in fines and administrative hearing costs being assessed.
- (9) Notice that requests for continuances will not be considered if not received by the code compliance hearing officer at least ten calendar days prior to the date set for the hearing.
- (10) Notice that any affirmative defenses to be raised at the hearing must be presented to the code compliance hearing officer and the code compliance officer no later than 5 days before the hearing. The alleged violator's failure to timely submit any affirmative defense shall constitute a waiver and preclude it from being raised at the hearing and considered by the hearing officer.
- (c) The manager or his designee shall call hearings on a monthly basis or upon the request of the code compliance officer.
- (d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the code compliance hearing officer at least ten calendar days prior to the date set for the hearing. A hearing may only be continued once. Provided, however, that the code compliance hearing officer shall have the discretion to continue or reschedule any hearing if the code compliance hearing officer determines that good cause exists and that doing so will further the interests of justice. In arriving at such a determination, the code compliance hearing officer may consider the timeliness of the request for continuance, whether the party requesting the continuance acted diligently in doing so, the unavailability of a necessary witness or other evidence without inexcusable neglect on the part of the party wishing to call such witness or present such evidence, and any other exigent circumstances, including a medical emergency, an act of God or other unforeseen event, and whether a prior continuance has been granted. Inexcusable neglect, on the part of the party requesting it, shall not constitute good cause for a continuance. If a continuance is granted, the code compliance clerk shall notify the code compliance officer and the violator cited of the date and time of the rescheduled hearing.
- (e) All hearings of the code compliance hearing officer shall be open to the public. All testimony shall be under oath. Upon proper notice, a hearing may proceed in the absence of the named violator.
- (f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.
- (g) The village clerk shall provide clerical and administrative personnel as may be reasonably required by each code compliance hearing officer for the proper performance of their duties.

- (h) Each case before a code compliance hearing officer shall be presented by the manager, his designee or the code compliance officer.
- (i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the code compliance hearing officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.
- (j) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called that witness to testify, and to offer rebuttal of the evidence.
- (k) The code compliance hearing officer shall make findings of fact and conclusions of law based on evidence of record.
- (l) The fact-finding determination of the code compliance hearing officer shall be limited to whether the alleged violation occurred, and, if so, whether the person named in the notice may be held responsible for that violation. If the alleged violation is found to have occurred, the code compliance hearing officer must determine whether the person named in the notice may be held responsible because the person named in the notice is either (1) the property owner or a user of the property who is responsible for the violation; or (2) the party who committed the acts upon which the violation was found. Based upon this factfinding determination, the code compliance hearing officer shall either affirm or reverse the decision of the code compliance officer. If the code compliance hearing officer reverses the decision of the code compliance officer and finds the named violator not responsible for the code violation alleged in the notice, the named violator shall not be liable for the payment of any fine or costs, absent reversal of the code compliance hearing officer's findings on appeal pursuant to section 2-121.
- (m) If the named violator is found to have violated the Code, he shall be held liable for the reasonable costs of prosecution in the amount of \$125.00.
- (n) The decision of the code compliance hearing officer affirming the decision of the code compliance officer shall include the following elements:
 - (1) Amount of fine per day.
 - (2) Administrative costs of hearing.
 - (3) Date by which the violation must be corrected, not to exceed 45 days from the date of the order, to prevent resumption of continuing violation fines, if

applicable. For the purposes of this subsection, "correction" shall mean obtaining all required village permits and approvals and completing the corrective action within 45 days of the issuance of code compliance hearing officer's order. Alternatively, "correction" shall mean the removal, demolition or abatement of the violation within 45 days of the issuance of the code compliance hearing officer's order.

- (o) A code compliance hearing officer shall not postpone a hearing because the named violator, prior to the scheduled hearing date, files with the duly authorized village board of appropriate jurisdiction, if any, an administrative appeal concerning the interpretation or application of the Code provisions upon which the alleged violation was based. Rather the hearing shall take place as provided in this article and an order shall be issued subject to a determination in favor of the violator by such duly authorized board. If the appeal is unsuccessful the fine assessed by the code compliance hearing officer will be retroactively imposed. However, once an issue has been determined by a code compliance hearing officer in a specific case, that issue may not be further reviewed by a village board in that specific case unless an appeal was filed with the board prior to the code compliance hearing.
- (p) The code compliance hearing officer shall be bound by the interpretations and decisions of duly authorized village boards concerning the provisions of the Code within their respective jurisdictions. In the event such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code provision on which the violation is based, the code compliance hearing officer shall not be empowered to proceed with the enforcement of the violation and he shall vacate any order entered.

Section 3. Repeal of Conflicting Provisions. The provisions of the 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 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. Inclusion in the Code. 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 Code, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word where applicable.

Section 6. Effective Date. This Ordinance be effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Anna Richards, who moved its adoption on first reading. This motion was seconded by Deb Gillis and upon being put to a vote, the vote was as follows:

Mayor Sharon Mahoney	<u>Yes</u>
Vice Mayor Don Horton	<u>Yes</u>
Councilwoman Deb Gillis	<u>Yes</u>
Councilman Steve Friedman	<u>Yes</u>
Councilwoman Anna Richards	<u>Yes</u>

PASSED on first reading this 10th day of June, 2025.

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Mayor Sharon Mahoney	<u>Yes</u>
Vice Mayor Don Horton	<u>Yes</u>
Councilwoman Deb Gillis	<u>Yes</u>
Councilman Steve Friedman	<u>Yes</u>
Councilwoman Anna Richards	<u>Yes</u>

SHARON MAHONEY, MAYOR

MARNE MCGRATH, VILLAGE CLERK


JOHN J. QUICK, VILLAGE ATTORNEY

