

ORDINANCE NO. 14-08

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE II “RULES OF CONSTRUCTION AND DEFINITIONS,” SECTION 30-32 “SPECIFIC DEFINITIONS;” AND AMENDING ARTICLE VII “ENVIRONMENTAL REGULATIONS,” DIVISION 2 “DOCKS AND SHORELINE USES,” SECTION 30-1545 “BULKHEADS, SEAWALLS OR RIPRAP” OF THE VILLAGE CODE TO PROVIDE FOR CLARIFICATION, CONSISTENCY AND IMPLEMENTATION WITH FLORIDA STATUTES AND ADMINISTRATIVE RULES ESTABLISHED PURSUANT TO THE FLORIDA ADMINISTRATIVE CODE; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY

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

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, Islamorada, Village of Islands, Florida (the “Village”) proposes to amend (the “Amendment”) the Village Land Development Regulations (the “LDRs”); and

WHEREAS, Section 163.3202, Florida Statutes, directs local governments to periodically assess the status of the adopted Land Development Regulations and ensure they are consistent with and implement their adopted comprehensive plan; and

WHEREAS, the quality of the Village’s near shore waters is critical to the continued protection of environmentally sensitive aquatic and marine resources; and

WHEREAS, the quality of the Village’s near shore waters is critical to the Village’s economic sustainability; and

WHEREAS, the LDR Amendment is consistent with Florida Statutes and Florida Administrative Code and serve to eliminate duplication and redundancy; and

WHEREAS, the Village desires to amend Chapter 30 “Land Development Regulations,” Article II “Rules of Construction and Definitions”, Section 30-32 “Specific Definitions” to provide for necessary clarification, consistency and implementation of Florida Statutes and Administrative Rules established pursuant to the Florida Administrative Code (the “F.A.C.”); and

WHEREAS, pursuant to Chapter 163.3174, Florida Statutes and Sections 30-101 of the Village Code, the Local Planning Agency publicly considered this Ordinance during a duly noticed public hearing; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, this Ordinance is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Community Planning Act; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village and complies with all applicable laws, as well as promotes the general health, safety, and welfare of the Village residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS¹:

Section 1. Specific Definitions. Chapter 30 “Land Development Regulations,” Article II “Rules of Construction and Definitions,” Section 30-32 “Specific Definitions” of the Village Code is hereby amended to read as follows:

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Sec. 30-32. – Specific Definitions.

* * * * *

Riprap is a sloping retaining or stabilizing structure made to reduce the force of waves and to protect the shore from erosion, and consists of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing protrusions. ~~means natural or concrete boulders six inches to three feet in diameter or in average dimensions.~~

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Section 2. Bulkheads, seawalls or riprap. Section 30-1545 of the Village Code is hereby amended to read as follows:

Sec. 30-1545. - Bulkheads, seawalls or riprap.

- (a) New vertical seawall or bulkhead structures shall not be permitted on open water except pursuant to specific criteria established in Section 373.414(5), Florida Statutes, as may be amended. ~~Vertical seawalls, bulkheads or riprap may be allowed only when the village in coordination with the state department of environmental protection determines that significant erosion exists due to hydrological activity and that no other protection method is suitable to the specific and unique conditions of the site. Bulkheads and seawalls shall only be permitted on manmade canals, channels or basins. Such seawalls or bulkheads shall be permitted only if native vegetation and riprap with filter cloth are not a feasible means to control erosion. An example would be a significantly eroding shoreline, which drops so sharply that no suitable bank exists for the placement of native plants, riprap materials or other materials used in similar stabilization methods.~~
- (b) New hardening of the shoreline on open water shall only be considered when extreme erosion is evident as provided in subsection (d) of this Section, and it can be affirmatively demonstrated that the use of vegetation, including existing undisturbed vegetation on site, will not prevent further erosion. The design of the permitted riprap, bulkhead or seawall system shall include a minimum six-inch retention swale, berm or curb directly landward of the proposed system. Shoreline stabilization shall be reviewed and evaluated based upon criteria established in Administrative Rule 62-312.440 of the Florida Administrative Code (“F.A.C.”), except as provided in Sections 403.813(1) and 373.414(5), Florida Statutes, and Administrative Rule 62-330, of the F.A.C. as may be amended. Vertical seawalls as defined pursuant to Administrative Rule 62-330, F.A.C., shall not be permitted. ~~Hardening of the shoreline, using riprap, shall be allowed only when~~

~~erosion is causing a significant threat to life or property as determined in subsections (d) and (e) of this section. Limited exceptions will be allowed for docking and launching facilities permitted by this section. Proposals for riprap on open water must prove revegetation will fail to provide shoreline protection within the shoreline setback.~~

- (c) Hardening of the shoreline on altered shorelines with bulkheads, seawalls and other vertical structures may be permitted only to stabilize severely eroding shorelines under the criteria set forth in Administrative Rule 62-330.0501 (12), F.A.C. and subsection (e) of this Section. Stabilization will only be considered when extreme erosion is evident and it can be affirmatively demonstrated that the use of vegetation, including existing undisturbed vegetation on site, will not prevent further erosion. ~~Native plant revegetation used in combination with riprap materials, pervious interlocking brick systems, filter mats and other similar stabilization methods shall be used in lieu of vertical seawalls or bulkheads.~~
- (d) The following minimum criteria shall be used by the director ~~in coordination with the state department of environmental protection~~ to assess each application for shoreline hardening on open water in the determination that extreme erosion is evident: ~~causing a significant threat to life or property~~:
- (1) Increasing, destructive loss of native vegetation, which results in a documented accelerated shoreline loss greater than one foot per year, for a period of not less than ten consecutive years, due to wave, wake or stormwater activity (not related to rainwater runoff from the upland portion of the property) where the applicant has provided clear and convincing evidence that properly designed alternatives employing the establishment of native vegetation, gently sloping or tiered shoreline have failed to provide shoreline protection within the shoreline setback and that the erosion is not the result of unlawfully existing structures on adjacent or adjoining properties. Aerial photographs over the ten year period shall be supplied by the applicant, as may be available from the village. The burden of proof shall be the responsibility of the applicant; or
 - (2) Lawfully existing, permanent structures on the subject property, including legally permitted bulkheads, seawalls and retaining walls, which are demonstrated to face imminent threat of destruction from continued shoreline loss.
- (e) ~~When minimum criteria for demonstrating serious erosion have been met, then h~~ Hardening may be considered as an allowable shoreline protection methodology on an altered shoreline a ~~manmade canal or basin~~ under the following conditions:
- (1) The lot is immediately adjacent to and between existing riprap, bulkheaded or seawalled lots on either side of the subject property, or is located in a private residential canal exhibiting greater than 75 percent existing riprap, bulkheaded or seawalled lots and the lot is less than 150 feet from existing riprap, bulkheaded or seawalled lots on either side of the adjoining shoreline;
 - (2) The establishment of the riprap, bulkhead or seawall shall not increase the waterward extension of the existing shoreline;

- (3) The design and installation of the permitted riprap, bulkheaded or seawalled system shall not cause the erosion of abutting properties to be accelerated by the establishment of the applicant's riprap, bulkhead or seawall. It shall be the responsibility of the property owner who has constructed the riprap, bulkhead or seawall to remediate such accelerated erosion activity on adjoining properties and the applicant shall be required to state such responsibility on the approved plans;
- (4) The design of the permitted riprap, bulkheaded or seawalled system shall include revegetation with native shoreline vegetation appropriate to tidal and upland sections of the shoreline as an integral part of the project on open water or natural waterways. The intent of this subsection is to avoid direct stormwater runoff to wetlands and waterways. Such vegetation shall be protected and maintained in accordance with a management plan approved by the director; and
- (5) The design of the permitted riprap, bulkheaded or seawalled system shall include a minimum six-inch retention berm or curb installed directly landward of the structure.

(f) Riprap shall meet the following design criteria:

- (1) Constructed at slope no steeper than two (horizontal) to one (vertical) and the horizontal distance is no more than eight feet;
- (2) There are no reinforcing rods or other similar protrusions in concrete rubble; and
- (3) All rubble or boulders are free of attached sediments such as concrete, except as may be necessary at the points of contact to secure the boulders. Filling of gaps and crevices with concrete is not permitted.

~~(g) Shoreline hardening proposals must provide plans, test results, or other professionally accepted information that affirmatively demonstrates that any proposed shoreline hardening project will not impact any one of the following:~~

- ~~(1) Adversely impact water quality;~~
- ~~(2) Adversely affect adjacent properties;~~
- ~~(3) Adversely affect biological communities;~~
- ~~(4) Adversely affect the flow of water;~~
- ~~(5) Infringe upon the riparian rights of the adjacent property owners;~~
- ~~(6) Increase the waterward extension of the existing shoreline;~~
- ~~(7) Fill or dredge submerged lands other than the placement of the riprap material itself;~~
- ~~(8) Backfill more than six inches above the existing grade behind the riprap as required for stormwater retention; or~~
- ~~(9) Create a navigational hazard.~~

(g)(h) Deteriorated lawfully existing seawalls, bulkheads or riprap on any shoreline may be repaired and/or replaced subject to criteria set forth in this section and chapter subject to the following conditions:

- (1) The structure is legally existing or permissible pursuant to this section;
 - (2) Repairs and/or replacements must maintain the existing footprint to the maximum extent practicable;
 - (3) Repairs and/or replacement are limited to the extent necessary to maintain the integrity of the upland;
 - (4) Deteriorated or damaged seawalls and bulkheads shall be repaired using riprap in conjunction with native shoreline vegetation; and
 - (5) Bulkheads shall be permitted only if riprap with filter cloth in conjunction with native vegetation is not a feasible alternative as determined by the director.
- (⊕) (h) In all cases where shoreline hardening is allowed along an open water shoreline, revegetation with native shoreline vegetation appropriate to tidal and upland sections of the shoreline shall be required as an integral part of the development. The revegetation plan shall provide a minimum of 50 percent of the hardened shoreline to be planted with a Class B bufferyard along the length of the shoreline with appropriate salt tolerant vegetation as approved by the Village Biologist. ~~and incorporate red, white or black mangroves.~~ Ground covers or vines may be substituted (up to 70 percent) but must be planted at double the requirement. This requirement is intended to provide scenic buffering along the waterway and to improve and/or maintain the biological functions of the shoreline, protection from storm surges and preservation of the upland transition zone.
- (⊕) (i) Any attachments to seawalls or bulkheads, such as davits, cleats, platforms or any other elements that constitute docking facilities, shall not be allowed except as an accessory to a principal use. Seawalls may have a cap of up to two feet in width without being considered a dock.
- (⊕) (j) Where feasible, riprap, bulkheads and seawalls should be placed landward of any existing mangroves. Native upland, wetland, and aquatic biotic communities shall be preserved to the maximum extent possible.
- (⊕) (k) Where feasible, riprap shall be placed at the base and waterward of solid seawalls and bulkheads to dissipate wave energy and provide substrate for marine organisms.
- (⊕) (l) Seawalls, bulkheads, riprap, boulders or other shoreline hardening structures shall not be permitted on or waterward of any portion of a shoreline which is a known or potential nesting area for marine turtles or other species listed as threatened or endangered and indicated on the habitat and protected animal species maps.
- (⊕) (m) Within mapped nesting areas, the director may, in cooperation with the state department of environmental protection, determine that specific segments of shorelines have been lawfully altered, including natural erosion, to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the director may recommend reasonable measures to restore the nesting habitat, including but not limited to removal of structures, or allow hardening with riprap and native vegetation. If such measures are not feasible, the setback

requirements for sea turtle nesting shall not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

- (e)(n) Shoreline stabilization or beach renourishment projects on open water may be approved only upon a determination by the director that the project has a valid public purpose that furthers the goals, objectives and policies of the comprehensive plan.

Section 3. **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is 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 4. **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 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 a part of the Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. **Transmittal to the Florida Department of Economic Opportunity.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the Florida Department of Economic Opportunity ("DEO") for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. **Effective Date.** This Ordinance shall not be effective until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Ordinance herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this

Ordinance shall not be effective until either sixty (60) days after its transmittal to DEO or until twenty-one (21) days following the publishing in the Florida Administrative Weekly of a final order approving the Ordinance by DEO, pursuant to Chapter 380.05, Florida Statutes; or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

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

Mayor Ken Philipson	<u>YES</u>
Vice Mayor Ted Blackburn	<u>YES</u>
Councilman Mike Forster	<u>YES</u>
Councilwoman Deb Gillis	<u>YES</u>
Councilman Dave Purdo	<u>YES</u>

PASSED on first reading this 26 day of September, 2013.

The foregoing Ordinance was offered by Councilman Mike Forster, who moved for its adoption on second reading. This motion was seconded by Vice Mayor Deb Gillis, and upon being put to a vote, the vote was as follows:

Mayor Ted Blackburn	<u>YES</u>
Vice Mayor Deb Gillis	<u>YES</u>
Councilman Mike Forster	<u>YES</u>
Councilman Ken Philipson	<u>YES</u>
Councilman Dave Purdo	<u>YES</u>

PASSED AND ADOPTED on second reading this 8th day of May, 2014.



TED BLACKBURN, MAYOR

ATTEST:



SYNTHIA LANKFORD, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY