

ORDINANCE NO. 23-07

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, ARTICLE IV, DIVISION 2 – DEVELOPMENT REVIEW PROCESS BY STANDARDIZING PUBLIC NOTICE PROVISIONS; 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, Islamorada, Village of Islands has established Land Development Regulations to properly guide development and protect the health, safety, and welfare of the public; and

WHEREAS, as a part of the development review process the Village has established Public Notice provisions associated with various application types; and

WHEREAS, current Public Notice provisions include contrasting and confusing notice provisions for individual application types; and

WHEREAS, the standardization of Public Notice requirements for all application types would provide a clear and understandable set of standards for applicants and members of the community; and

WHEREAS, clear and understandable Public Notice provisions would facilitate increased public participation in the review process and establish a regulatory process that is open, transparent, and inclusive consistent with sound planning practice.

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, is hereby modified as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as strikethrough
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Sec. 30-213. Public hearing and notice.

- (a) When an application for development permit is subject to a public hearing, 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 following information:
- (1) Identify the applicant, if other than the village.
 - (2) Indicate the date, time, and place of the public hearing.
 - (3) Describe the property involved by street address or by legal description, and area of the subject property. A map may be substituted for the legal description or as required by state law.
 - (4) Identify the current zoning district designation of the property subject to the application.
 - (5) Describe the nature, scope and purpose of the application proposal being noticed.
 - (6) Identify the village departments where the public may inspect the application, staff report and related materials during normal business hours.
 - (7) Include a statement that affected parties may appear at the public hearing, be heard and submit evidence with respect to the application.

- (b) When the provisions of this chapter require that mailed notice be provided, the applicant shall be responsible for ~~for the cost of village staff~~ preparing the written notice and for mailing the notice. Notice shall be deemed mailed by its deposit in the United States mail, certified/return receipt required, properly addressed, ~~and postage paid~~ and postmarked at least 15 days prior to the public hearing date or upon issuance of the Notice of Intent (NOI). No action taken by the village shall be voided by the failure of any individual property owner to receive such notice.
- (c) When the provisions of this chapter require that notice be published, the applicant shall be responsible for ~~the cost of village staff~~ preparing the content of the notice and publishing the notice in the non-legal section of the local newspaper of general circulation that has been selected by the village. This notice shall be published at least 15 days before the required public hearing or upon issuance of the NOI.
- (d) When the provisions of this chapter require that notice be posted on the property subject to the application, the ~~director of planning and development services~~ Applicant or Representative shall:
- (1) Place the signs on the property that is the subject of the application for at least 15 days prior to a required or requested hearing or upon issuance of the NOI.
 - (2) Place the signs along each street that is adjacent to or runs through the subject property at intervals of not more than 200 feet in a manner that makes them clearly visible to adjacent residents and passersby.
 - (3) Place the signs no more than 25 feet from the street so that the lettering is visible from the street. Where the land does not have frontage on a street, signs shall be erected on the nearest street, with an attached notation indicating generally the direction and distance to the property subject to the application.
- (e) An affidavit and photographic evidence shall be provided by the Applicant or Representative before the public hearing or prior to the issuance of a Notice of Approval (NOA) demonstrating compliance with the applicable notice requirements set forth in this section. Failure to comply with the applicable notice requirements shall result in the postponement

and re-noticing of the public hearing or a restart of the appeal period. All costs of re-noticing the public hearing shall be borne by the party ~~failing to comply with the applicable notice requirements~~ Applicant or Representative.

(f) Notice for public hearings on applications for comprehensive plan text or map amendments shall be noticed as follows:

(1) Text or map amendments initiated by the village shall be noticed by publication in accordance with the provisions of F.S. § 163.3184.

(2) Text or map amendments initiated by a property owner or governmental agency other than the village shall be noticed by publication in accordance with the provisions of F.S. § 163.3184, and by posting of the property subject to the application at least 15 day prior to the public hearing.

(g) Notice for public hearings on applications for amendments to this chapter and the official zoning map shall be noticed as follows:

(1) Text or map amendments initiated by the village shall be noticed by publication in accordance with the provisions of F.S. § 166.041.

(2) Text or map amendments initiated by a property owner or governmental agency other than the village shall be noticed by publication in accordance with the provisions of F.S. § 166.041, and by posting of the property subject to the application at least 15 day prior to the public hearing.

(h) Notice of intent to issue and public hearings on applications for development permit approvals including, but not limited to, certificates of compliance, minor and major conditional uses, administrative appeals, variances, administrative variances, alcohol beverage use permits, development status reports and site plans shall be noticed as follows:

~~(1) Posting of the property subject to the application.~~

~~(2) Mailed notice to the adjacent property owners. For the purpose of this subsection, "adjacent property owners" shall be considered all property owners, including any residents of the property subject to the application, that share a common boundary line~~

~~with the property subject to the application. If the property subject to the application is located on a canal or fronts on a public right of way, the common boundary shall be considered the midpoint of the canal or right of way. The property owners required to be provided notice by this subsection shall be determined with a copy of the most up-to-date version of the county tax roll.~~

~~(i) Notice of public hearings on applications for major conditional use approvals shall be noticed as follows:~~

- ~~(1) Posting of the property subject to the application.~~
- ~~(2) Mailed notice to all property owners, including any residents of the property subject to the application, located within 300 feet of the property subject to the application postmarked at least 15 days prior to the public hearing or upon issuance of the NOI. The property owners required to be provided notice by this subsection shall be determined with a copy of the most up-to-date version of the county tax roll.~~

~~(3) By publication.~~

~~(j) Notice for public hearings on applications for administrative appeals, development permit status reports or variances shall be noticed as follows:~~

- ~~(1) Posting of the property subject to the application.~~
- ~~(2) Mailed notice to all property owners, including any residents of the property subject to the application, located within 300 feet of the property subject to the application. The real property owners required to be provided notice by this subsection shall be determined with a copy of the most up-to-date version of the county tax roll.~~

~~(k) Notice of intent to issue and public hearings on applications for administrative variances shall be noticed as follows:~~

- ~~(1) Posting of the property subject to the application.~~
- ~~(2) Mailed notice to the adjacent property owners. For the purpose of this subsection "adjacent property owners" shall be considered all property owners, including any residents of the property subject to the application, that share a common boundary line~~

~~with the property subject to the application. If the property subject to the application is located on a canal or fronts on a public right of way, the common boundary shall be considered the midpoint of the canal or right of way. The property owners required to be provided notice by this subsection shall be determined with a certified copy of the most up to date version of the county tax roll.~~

~~(l) Notice of public hearings on applications for alcohol beverage use permits shall be noticed as follows:~~

~~(1) Posting of the property subject to the application.~~

~~(2) Mailed notice to all property owners, including any residents of the property subject to the application, located within 500 feet of the property subject to the application. The real property owners required to be provided notice by this subsection shall be determined with a copy of the most up to date version of the county tax roll.~~

~~(3) By publication.~~

NOTICE REQUIREMENTS

Permit	Notice Section	Posted	Published	Mailed
Certificate of compliance	30-213(h)	15 days after NOI or prior to hearing <u>Upon</u> <u>issuance of the</u> <u>NOI</u>	No <u>15 days prior</u> <u>to public hearing</u>	Adjacent owners <u>Owners within</u> <u>300 feet</u>
Site plan	30-213(h)	15 days after NOI or prior to hearing <u>Upon</u> <u>issuance of the</u> <u>NOI</u>	No <u>15 days prior</u> <u>to public hearing</u>	Adjacent owners <u>Owners within</u> <u>300 feet</u>

Administrative variance	30-213(k)	15 days after NOI or prior to hearing Upon issuance of the NOI	No 15 days prior to public hearing	Adjacent owners Owners within 300 feet
Minor conditional	30-213(h)	15 days after NOI or prior to hearing Upon issuance of the NOI	No 15 days prior to public hearing	Adjacent owners Owners within 300 feet
Major conditional	30-213(i)	15 days after NOI or prior to hearing	15 days prior to public hearing	Owners within 300 feet
Administrative appeal	30-213(j)	15 days after NOI or prior to hearing	No 15 days prior to public hearing	Owners within 300 feet
Variance	30-213(j)	15 days after NOI or prior to hearing	No 15 days prior to public hearing	Owners within 300 feet
Comprehensive plan—Village	30-213(f)(1)	No	F.S. § 163.3184	
Comprehensive plan—Owner	30-213(f)(2)	15 days prior to <u>public hearing</u>	F.S. § 163.3184	
Zoning map and text—Village	30-213(g)(1)	No	F.S. § 166.041	
Zoning map and text—Owner	30-213(g)(2)	15 days prior to <u>public hearing</u>	F.S. § 166.041	

Development permit status report	30-213(j)	15 days prior to public hearing	<u>15 days prior to public hearing</u>	Owners within 300 feet
Alcohol beverage use permit	30-213(l)	15 days prior to public hearing	15 days prior to public hearing	Owners within <u>500-300</u> feet

Sec. 30-255. - General procedures.

(a) Witnesses and evidence. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.

(b) Duties of village staff. Staff shall have the responsibility of presenting the case on behalf of the village. The staff report on the application shall be posted on the Village website at least ten (10) made available to the applicant and the council at least 12 working days prior to the quasi-judicial hearing on the application.

(c) Official file. All written communication received by councilmembers or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The comprehensive plan and the village Code shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.

(d) Agenda. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall briefly explain the procedures and nature of the quasi-judicial hearing.

Secs. 30-1404—30-1430. - 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 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>No</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 Elizabeth Jolin, who moved for its adoption on second 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 AND ADOPTED on the second reading this 20 day of July, 2023.



JOSEPH B. PINDER, MAYOR

ATTEST:



MARNE MCGRATH, VILLAGE CLERK

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



JOHN J. QUICK, INTERIM 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. 23-07

**FINAL ORDER APPROVING ISLAMORADA,
VILLAGE OF ISLANDS ORDINANCE NO. 23-07**

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. 23-07 (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 to provide uniform requirements for providing public notice. Additionally, the Ordinance shifts the responsibility of providing proper notice from the Village to the applicant.

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 Policies 1-1.2.1, 1-2.2.1, 1-2.2.2, 1-2.2.4, 1-2.1.8, 1-4.10.4, 8-2.1.2 and Objectives 1-4.1, 9-1.4, and 10-1.1.

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.

(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. 23-07 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.


Meredith Ivey, 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

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 September, 2023.


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