

**ORDINANCE NO. 15-3**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE IV “ADMINISTRATIVE PROCEDURES,” DIVISION 2 “DEVELOPMENT REVIEW PROCESS,” SECTION 30-213 “PUBLIC HEARING AND NOTICE” OF THE VILLAGE CODE TO PROVIDE FOR NOTICE REQUIREMENTS FOR ALCOHOL BEVERAGE USE PERMITS; AMENDING ARTICLE VI “SPECIFIC USE RESTRICTIONS,” DIVISION 11 “ALCOHOLIC BEVERAGE USE PERMIT” OF THE VILLAGE CODE TO ESTABLISH MINIMUM DISTANCE SEPARATION REQUIREMENTS WITHIN THE VILLAGE; 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**, the Village finds that the regulation of alcoholic beverage use permits within the Village will preserve the character of the residential and nonresidential areas of the Village; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the “Village Council”) desires to prohibit the establishment of new alcoholic beverage use permits within a specified distance from places of worship, schools and child care facilities; and

**WHEREAS**, in accordance with the requirements of Chapter 163, Florida Statutes, the Local Planning Agency reviewed this Ordinance on October 13, 2014 and December 8, 2014; 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.

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

**Section 1. Public Hearing and notice.** Chapter 30 “Land Development Regulations,” Article IV, “Administrative Procedures”, Division 2, “Development Review Process”, Section 30-213 “Public Hearing and Notice” of the Village Code of Ordinances is hereby amended to read as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as <del>strikethrough</del>
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(1) 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	30-213(h)	15 days after NOI or	No	Adjacent

compliance		prior to hearing		owners
Site plan	30-213(h)	15 days after NOI or prior to hearing	No	Adjacent owners
Administrative variance	30-213(k)	15 days after NOI or prior to hearing	No	Adjacent owners
Minor conditional	30-213(h)	15 days after NOI or prior to hearing	No	Adjacent owners
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	Owners within 300 feet
Variance	30-213(j)	15 days after NOI or prior to hearing	No	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	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	F.S. § 166.041	
Development permit status report	30-213(j)	15 days prior to public hearing		Owners within 300 feet
<u>Alcohol Beverage Use Permit</u>	<u>30-213(l)</u>	<u>15 days prior to public hearing</u>	<u>15 days prior to public hearing</u>	<u>Owners within 500 feet</u>

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**Section 2. Alcohol Beverage Use Permit.** Chapter 30 “Land Development

Regulations,” Article VI, “Specific Use Restrictions”, Division 11, “Alcohol Beverage Use Permit” of the Village Code of Ordinances is hereby amended to read as follows:

**Sec. 30-1461. Generally.**

(a) *Purpose and intent.* This section is designed and intended to provide for reasonable regulations and control over the production, manufacture, brewing and/or sale of alcoholic beverages within the village by establishing an alcoholic beverage use permit procedure and providing criteria to be utilized to assure that all future proliferation of alcoholic beverage use enterprises within the village are compatible with adjoining and surrounding land uses and the village's comprehensive plan, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact on the health, safety and welfare of the citizens and residents of the village.

(b) *Permit required.* All persons desiring to produce, manufacture, brew and/or sell alcoholic beverages upon any premises located within the village and who desire to do so upon premises not previously approved for an alcoholic beverage use permit shall obtain an alcoholic beverage use permit utilizing the procedures outlined in subsection (d) of this section.

(c) *Classifications.* Corresponding to those alcoholic beverage license classifications adopted by the state, as may be amended from time to time, alcoholic beverage use permits issued pursuant to this division shall be classified as follows:

- (1) 1APS: Beer, package sales only.
- (2) 1COP: Beer, consumption on-premises and package sales.
- (3) 2APS: Beer and wine, package sales only.
- (4) 2COP: Beer; and wine, consumption on-premises and package sales.
- (5) 3BPS: Beer, wine and liquor, package sales only.
- (56) 5COP: Beer, wine and liquor, consumption on-premises and package sales.
- (67) 5COP SRX: Restaurant, no package sales.
- (78) 5COP SR: Restaurant, package sales.
- (89) 5COP S: Motel, package sales.
- (910) 5COP SBX: Bowling, no package sales.
- (101) 5COP SPX: Boat, no package sales.
- (142) ~~3BPS: Beer, wine and liquor, package sales only.~~ CMB: Manufacturer / Brewer of Malt Beverages

(d) *Procedure.* The following procedures shall be followed on any application for an alcoholic beverage use permit:

(1) Applications for alcoholic beverage use permits shall be submitted in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by a fee as 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. Applications shall be reviewed in accordance with the applicable provisions of article IV, division 2 of this chapter.

(2) 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 information required pursuant to section 30-213.

(3) The director of planning and development services shall provide written notice to all owners of real property within a radius of 500 feet of the affected premises, posting of the property subject to the application, and by publication pursuant to the procedures provided by section 30-213(1).

(4) The public hearing shall be conducted in accordance with article IV, division 3 of this chapter.

(e) Proximity to places of worship, schools and child care facilities.

(1) No person shall conduct any business involving the production, manufacture, brewing or sale of alcoholic beverages within three hundred (300) feet of any established place of worship, school and/or child care facility. Such distance shall be measured from the nearest point of the property line of the place of business to the property line of the place of worship, school and/or child care facility and used as a part of the place of worship, school and/or child care facility. However, any person or property licensed to conduct and legally conducting a business involving the production, manufacture, brewing or sale of alcoholic beverages as of the effective date of this amendment, shall be governed by the provisions of this section which existed at the time of the original licensure of such business. This prohibition shall not apply to temporary alcohol beverage use permits.

(2) When considering an application for a variance from the proximity requirement in subsection (1), the director and Village Council shall consider the following criteria:

a. The license sought is for consumption on-premises only;

b. The extent of conflict between the proposed use and the hours of operation of the facilities described in subsection (1) above;

c. Other nonresidential uses adjacent to or between the property of the proposed alcohol beverage use permit and the facilities described in subsection (1) above; and

d. The property of the proposed alcohol beverage use permit is separated from the facilities described in subsection (1) above by a canal, channel or creek.

Public Notice shall be provided consistent with Code Section 30-213(j).

(~~e~~f) *Criteria.* The village council shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:

- (1) The proposed use is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development as represented by property owners within 500 feet of the premises;
- (2) The proposed use is consistent with the purposes, goals, objectives and policies of the comprehensive plan and this chapter, including standards for building and structural intensities and densities, and intensities of use; and the suitability of the premises in regard to its location, site characteristics and intended purpose;
- (3) The proposed use complies with article IV, division 5 of this chapter (Concurrency Management); and
- (4) The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

(~~f~~g) *Approval by village council.* The village council may grant approval based on reasonable conditions considering the criteria outlined herein.

(~~g~~h) *Where permitted.* Alcoholic beverage use permits may be granted in the following zoning districts: village center (VC); tourist commercial (TC); marine use (MR); highway commercial (HC); industrial (I) and neighborhood commercial (NC). Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the zoning district in which they are located. Nothing contained herein shall exempt an application from obtaining a major or minor conditional use approval when such is otherwise required by this chapter.

(~~h~~i) *Transferability.* Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property which has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the application. Such privilege may not be separated from the fee simple interest in the realty.

(j) *Appeals.* The applicant, or any aggrieved person who has opposed the issuance of the alcoholic beverage permit at the scheduled public hearing, may appeal the decision of the village council by filing a petition for writ of certiorari in the circuit court in and for the county, in accordance with the procedure provided by the Florida Rules of Civil

Procedure and the Florida Rules of Appellate Procedure, within 30 days of the date of the decision by the village council.

**Section 3.**     **Repeal of Conflicting Provisions.** The provisions of the Village 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 of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 6.**     **Transmittal to the State 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 State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 7.**     **Effective Date.** This Ordinance shall not become effective until approved pursuant to final order issued by the State Department of Economic Opportunity pursuant to

Chapter 380, Florida Statutes or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

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

Mayor Mike Forster	NO
Vice Mayor Deb Gillis	YES
Councilman Jim Mooney	YES
Councilman Chris Sante	YES
Councilman Dennis Ward	YES

PASSED on first reading this 8<sup>th</sup> day of January, 2015.

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

Mayor Mike Forster	NO
Vice Mayor Deb Gillis	YES
Councilman Jim Mooney	ABSENT
Councilman Chris Sante	YES
Councilman Dennis Ward	YES

PASSED AND ADOPTED on second reading this this 12<sup>TH</sup> day of February, 2015.

  
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MIKE FORSTER, MAYOR

ATTEST:

  
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KELLY TOTH, VILLAGE CLERK

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

  
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ROGET V. BRYAN, VILLAGE ATTORNEY