

ORDINANCE NO. 24-15

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE VII "ENVIRONMENTAL REGULATIONS", DIVISION 2 "DOCKS AND SHORELINE USES", SECTION 30-1542 OF THE VILLAGE CODE; 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 wishes to allow for the safe and effective reconstruction of certain non-enclosed gazebos and tiki huts within the Village; 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 Council of the Village of Islamorada, in the State of Florida, as follows:

SECTION 1:**AMENDMENT** "Sec 30-1542 Shoreline Setback" of the Islamorada Village Code is hereby *amended* as follows:

Sec 30-1542 Shoreline Setback

All development within the shoreline setback shall be subject to the following standards and design criteria:

- (a) Principal structures shall be set back from the mean high water line (MHWL) or the landward extent of the mangroves as follows:
- (1) Twenty feet from the MHWL along legally altered shorelines including manmade canals, channels, and basins;
 - (2) Thirty feet from the MHWL or the landward extent of the mangroves, whichever is further landward along open water shorelines not adjacent to manmade canals, channels, or basins which have been legally altered, provided that:
 - a. A mangrove fringe of at least ten feet in width occurs across the entire shoreline of the property; or
 - b. Where no mangrove fringe exists, principal structures shall be set back at least 30 feet from the MHWL, provided that native vegetation exists or is planted with a Class G bufferyard pursuant to section 30- 815 of this chapter across the entire shoreline as approved by the director of planning and development services, and is placed under conservation easement; otherwise the setback shall be 50 feet as measured from the MHWL; or
 - c. Where developed lots exist within 200 feet on both sides of an infill lot and principal structures are set back less than 50 feet from the MHWL or the landward extent of the mangroves, whichever is further landward; the director of planning and development services may evaluate the community character, the presence or absence of environmental features, and the setbacks on adjacent developed properties within two parcels on either side of proposed development, and may allow principal structures to be set back as far as practicable or in line with adjacent principal structures. In no event shall the setback be less than 30 feet. On shorelines where the existing pattern of setback is greater than 30 feet from the MHWL, the greater setback shall apply.
 - (3) Fifty feet from the MHWL or the landward extent of the mangroves, whichever is further landward along unaltered or unlawfully altered shorelines.
- (b) On those beaches identified and approved by the village or department of environmental protection as turtle nesting areas, no structure, including fences, shall be permitted within 50 feet of the landward toe of the beach berm or 100 feet from the mean high-water line where the berm cannot be determined.
- (c) Shoreline setback requirements shall not apply to fences, seawalls, retaining

walls, riprap, and bulkheads as permitted pursuant to this division and this chapter. These structures may be allowed as principal uses where it is demonstrated that their purpose is for erosion control or upland protection as determined pursuant to this division or article V, division 9 of this chapter (Fences).

(d) Accessory uses and structures:

(1) Water-dependent accessory structures and uses may be located within the shoreline setback pursuant to the standards set forth in this division and this chapter. These structures and uses include, but may not be limited to the following: utility pilings, fences, docks, lifts, davits, boat ramps, boat slips, seawalls, riprap, bulkheads, elevated walkways, fish cleaning stations, fish sales, dock master's offices (limited to 150 square feet) and outside dining areas as permitted in article VI, division 9 of this chapter. Open-sided covered boat lifts may be erected only over a cut-in boat slip on manmade canals and may not extend into the adjacent body of water beyond the mouth of the cut-in area, nor extend over any mangroves, submerged seagrasses or hard-bottom communities. The roof and supporting members of a covered boat lift may extend two feet into the shoreline setback around the perimeter of a boat slip. No decks or habitable spaces shall be constructed on the roof of any covered boat lift. The highest portion of the roof of any covered boat lift shall be no more than 12 feet above grade.

(2) Non-water-dependent accessory uses and structures on altered shorelines on canals, basins and channels may include:

- a. Accessory uses and structures provided that in no event shall the total, combined area of all structures occupy more than 60 percent of the upland area of the shoreline setback.
- b. Pools and spas including associated decks, and any screen structures over pools or spas provided that a ten-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum of one canopy tree per 50 feet of rear property line is planted within the setback.
- c. Structures limited to elevated decks, pavers or non-enclosed gazebos limited to 15 feet in height provided that a ten-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum of one canopy tree per 50 feet of rear property line is planted within the setback.

d. Structures limited to non-enclosed gazebos and tiki huts not to

exceed 15 feet in height on docks parallel to the shoreline shall be permitted within the ten-foot setback from the mean high-water line.

- e. All other accessory structures shall meet the setback requirements for principal development.
- (3) Non-water-dependent accessory uses and structures on altered open water shorelines may include:
- a. Accessory structures provided that in no event shall the total, combined area of all structures occupy more than 30 percent of the shoreline setback.
 - b. Pools including associated decks provided that a ten-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum ten-foot wide Class B bufferyard is installed running along the rear property line.
 - c. Structures limited to elevated decks, pavers or non-enclosed gazebos limited to 15 feet in height provided that a ten-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum ten-foot-wide Class B bufferyard is installed running along the rear property line.
 - d. All other accessory structures shall meet the setback requirements for principal development.
- (4) Non-water-dependent accessory uses and structures on unaltered shorelines may include:
- a. Accessory uses and structures provided that in no event shall the total, combined area of all structures occupy more than 30 percent of the shoreline setback.
 - b. Pools including associated decks provided that a 20-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum ten-foot wide Class B bufferyard is installed running along the rear property line.
 - c. Structures limited to elevated decks, pervious pavers or non-enclosed gazebos limited to 15 feet in height provided that a 20-foot setback from the mean high-water line or landward extent of the mangroves, whichever is further upland, is maintained and a minimum ten-foot wide Class B bufferyard is installed running along the rear property line provided.

- d. Where provisions of division 3 of this article (Sea Turtle Nesting Protection), or division 5 of this article (Wetlands) govern, the more restrictive setback shall apply.
- e. All other accessory structures shall meet the setback requirements for principal development.
- (e) Boat ramps shall be confined to an existing cleared area wherever possible and shall be located and designed so as not to create a nonconformity. Boat ramps other than public ramps shall not exceed 20 feet in width. Boat ramps shall be set back a minimum of five feet from side property lines unless reduced by the director in cases where the strict interpretation would result in adverse environmental impacts.
- (f) Sand and clean screenings used for landscaping purposes on open water shorelines shall not constitute fill and may be placed within the shoreline setback, providing:
 - (1) The material maintains a minimum 20 feet from the mean high-water line or the landward extent of mangroves whichever is greater;
 - (2) The material does not alter the pre-development grade of the parcel more than six inches and maintains the natural slope of the shoreline. Berm material used for retention of the sand shall not exceed 12 inches in height and not be constructed as a permanent structure;
 - (3) Shall incorporate filter cloth landward on the berm;
 - (4) The placement of material does not require the removal of native vegetation; and
 - (5) The shoreline is not a potential or active turtle nesting area.
- (g) The launching or removal of all motorized watercraft is limited to lawfully existing dock and ramp facilities.
- (h) Beach restoration may be permitted providing the project receives permits from all federal and state agencies having jurisdiction prior to submission to the village.
- (i) No development other than pile-supported docks shall be located within 50 feet of the landward toe of the beach berm which is known to serve as an active or potential turtle nesting area. Where a beach berm cannot be determined, a 100-foot setback from the mean high-water line shall be required pursuant to division 3 of this article.
- (j) No vessel of any kind shall dock at, moor to, or tie up to shoreline vegetation, including mangroves. Nothing, however, shall prohibit vessels or persons in distress from mooring to, tying up to, or beaching onto shoreline vegetation, including mangroves, in an emergency situation as may be declared by the mayor.
- (k) Accessory structures, as defined in section 30-32, within the shoreline setback

shall be constructed at a foundation height not to exceed 18 inches above existing grade. Screen enclosures over pools within the shoreline setback shall not exceed 15 feet in height.

SECTION 2: **RECITALS.** The above recitals are true and correct and are incorporated herein by this reference.

SECTION 3: **REPEALER CLAUSE** 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 CLAUSE** 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.

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 Councilmember Jolin, who moved for its adoption on first reading. This motion was seconded by Councilmember Gregg and upon being put to a vote, the vote was as follows:

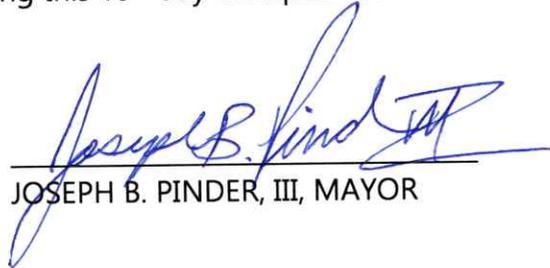
Mayor Joseph B. Pinder III	YES
Vice Mayor Sharon Mahoney	YES
Councilman Mark Gregg	YES
Councilwoman Elizabeth Jolin	YES
Councilman Henry Rosenthal	YES

PASSED on the first reading this 8th day of August 2024.

The foregoing Ordinance was offered by Councilmember Gregg, who moved for its adoption on second reading. This motion was seconded by Councilmember Jolin, 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	YES
Councilman Henry Rosenthal	YES

PASSED AND ADOPTED on the second reading this 10th day of September 2024.


JOSEPH B. PINDER, III, 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



Miscellaneous

DEPARTMENT OF COMMERCE

Division of Community Development

Commerce Final Order No. COM-24-043

FINAL ORDER APPROVING ISLAMORADA, VILLAGE OF ISLANDS

ORDINANCE NO. 24-15

The 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 ("Village"), by Ordinance No. 24-15 (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 September 10, 2024, and rendered to the Department on September 12, 2024.
3. The Ordinance amends Section 30-1542 of the Village Code to allow for the construction of non-enclosed gazebos and tiki huts, not to exceed fifteen (15) feet, on a dock on canals or basins.

CONCLUSIONS OF LAW

4. 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.
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 Goal 1-1, Goal 6-1, Objective 6-1.4, and Policy 6-1.4.3.
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 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.

WHEREFORE, IT IS ORDERED that the Department finds that Ordinance No. 24-15 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.

/s/ Justin Domer

Justin Domer, 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 24th day of October, 2024.

/s/ 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



Florida Department of State

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Notice List

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 Notice Adopted	Section	Description	ID	Publish Date
	Misc Agency 73C	Commerce Final Order No. COM-24-043	28918239	10/28/2024 Vol. 50/211
	Variances 61C-4.010	On August 14, 2024 the Division of Hotels and Restaurants received a Petition for a Routine Variance for Subparagraph 61C-1.004(2)(a), Florida Administrative Code, Paragraph 61C-4.010(7) Florida Administrative Code and Paragraph	28725918	9/6/2024 Vol. 50/175
	Misc Agency 73C	Commerce Final Order No. COM-24-034	28683693	8/26/2024 Vol. 50/167
	Misc Agency 73C	Commerce Final Order No. COM-24-033	28673217	8/22/2024 Vol. 50/165
	Variances 61C-4.010	a Routine Variance for Subparagraph 61C-1.004(2)(a), Florida Administrative Code, Paragraph 61C-4.010(7), Florida Administrative Code, Paragraph 61C-4.010(6), Florida Administrative Code, and Section 6-402.11, 2017 FDA Food	28651586	8/15/2024 Vol. 50/160
	Misc Agency 73C	Commerce Final Order No. COM-24-029	28591446	7/30/2024 Vol. 50/148