

**VILLAGE OF ISLAMORADA
ORDINANCE 24-05**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,
AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE
IV "ADMINISTRATIVE PROCEDURES", DIVISION 2 "DEVELOPMENT REVIEW
PROCESS", SECTION 30-212 OF THE VILLAGE CODE TO CREATE A ZONING
IN PROGRESS PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

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 desires to amend existing provisions under Division 2, "Development Review Process" of Article IV of the Village's LDRs relating to provisions generally governing the development process; and

WHEREAS, specifically, the Village Council desires to amend Section 30-212, "Generally", of the Village Code to automatically implement zoning in progress upon the approval of a rezoning or amendment to Chapter 30 on first reading; 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 Village Council of the Village of Islamorada, in the State of 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.** "Sec 30-212 Generally" of the Islamorada Village Code is hereby *amended* as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as strikethrough
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AMENDMENT

Sec 30-212 Generally

- (a) *Development permits required.* No development shall take place within the jurisdiction of the village except after issuance of all development permits required under any applicable section of this chapter, the Code or village ordinance, and other governmental agencies having jurisdiction to regulate the development of land within the village's jurisdiction.
- (b) *Development by governmental agencies.* Prior to undertaking development, any governmental agency shall apply for the appropriate permit under the applicable sections of this chapter, the Code or village ordinance. If any governmental agency seeking to undertake development has been specifically exempted by federal or state law from compliance with this chapter, the Code or village ordinance, the agency shall file with the village manager and director of planning and development services evidence of such exemption. In the absence of such an exemption, governmental agencies shall apply for permits in the same manner as other persons.
- (c) *Technical codes.* The building, plumbing, electrical and other technical codes adopted by the village are expressly recognized as essential to the implementation of the village comprehensive plan and this chapter.
- (d) *Application for development.*
 - (1) Every application for a development permit shall be in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by a fee as is 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. The village shall be entitled to rely upon the statements or representations made by the applicant on a development permit application. If it is determined that the application is incomplete, or based upon incomplete or inaccurate information or misstatements of fact, notice shall be delivered to the applicant specifying the deficiencies. The director shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 20 working days, the application shall be considered withdrawn. If or when the application is determined complete, it shall be reviewed in accordance with the applicable provisions of this chapter. Notwithstanding anything in this chapter to the contrary, on a case-by-case basis, the director may make a written determination to waive some or all of the required submittals of a

development permit application. Annually, the director shall promulgate a calendar, as may be amended, showing application dates and deadlines consistent with the specifications of this chapter. This calendar shall govern all dates and the development review process.

- (2) All applications shall include proof of ownership and, if applicable, consent to be represented by an agent. All owners and any person having a contractual interest in the land shall give their permission for application. Unless otherwise specified in each section describing particular development review procedures, applications for development permits require a concurrency certification by the planning and development services department prior to being placed on the agenda for a public hearing or meeting or proceeding to the subsequent step in the development review process. Unless requested by the village, applications shall not be significantly altered after certifications. In no case shall any changes be made to a development application or development plans within ten working days of any required public hearing on the application, without a continuance of the hearing.
- (3) The director shall be entitled to a continuance, and an applicant shall be entitled to a continuance or withdrawal of an application for development permit if the request is made no later than five working days before final action on the application by the decision-making body or person. Requests for a continuance or withdrawal received later than five working days before the date the decision is to be made, or the public hearing is to take place, shall be granted only by the decision-making body or person with or without prejudice. Applicants in this case shall not be entitled to the return of application fees.
- (4) Whenever any application for a development permit is withdrawn or denied with prejudice, an application for development permit for all or part of the same land shall not be considered for a period of one year after the date of denial, unless the subsequent application involves a development proposal that is materially different from the prior proposal, or unless the person or a majority of the members of the decision-making body that made the final decision on the application determines that the prior denial was based on a material mistake of fact. For the purpose of this subsection, an application for development permit shall be considered materially different if it involves a change in use, or a change in intensity or density of use of 25 percent or more. The body or person charged with conducting the initial development application review or public hearing under such

successive application shall resolve any questions concerning the similarity of a second application.

- (5) To the extent practical, applications for development permits may be consolidated for review pursuant to an agreement between the applicant and the director as part of the pre-application conference. When applications for development permits are consolidated pursuant to this subsection, the time for review shall be no less than those established for the application for development permit with the longest review period.
- (6) The director and village council may impose such conditions on the granting of a development permit that are necessary to accomplish the purposes of the comprehensive plan and this chapter. Conditions shall be included if conventional standards are inadequate to protect the public interest and surrounding land uses or if additional improvements are needed to facilitate a more appropriate transition between different uses. Conditions are not intended to restate express provisions of this chapter. Such conditions may include the execution of unity of title and the location of uses on the site to minimize adverse off-site impacts and ensure on-site safety. Further, conditions may be imposed to provide road construction required for the project to meet village concurrency requirements and that allow the applicant to proceed to the subsequent stage of development review. Site-related conditions such as drainage improvements, turn lanes and signalization may be imposed. Conditions shall be reasonable, not be contrary to law and shall be limited to on-site impacts, except for off-site public road improvements or other conveyances reasonably related and proportionate to the project's impact. Conditions shall not amend village council imposed conditions or affect previously approved conditions. For modifications or additions to previously approved site plans, conditions shall only be imposed to address the specific impacts of the new use or development. Fixed times may be set for compliance with conditions and shall be governed by section 30-224.
- (7) Any application for development permit may be suspended during the pendency of a code enforcement proceeding or for any code violation involving all or a portion of the land proposed for development. Development permit applications for properties that have outstanding code violations, liens or fines owed to the village shall be restricted as follows:
 - a. The village shall not approve a final site plan or building permit until the code violation is remedied and payment of outstanding liens or fines is made to the village.
 - b. The village may approve a conditional use application;

however, it shall not do so unless, as a condition of approval, the code violation is remedied and the applicant agrees to the payment of all outstanding liens or fines by a date certain or prior to a specific event.

- c. In the event litigation contesting the code violation or the validity of the lien or fine is initiated before the application for the development permit, the time for compliance or payment shall be established only after the conclusion of litigation.
- (e) *Violation of permit condition or time limitation.* A violation of any condition or time limitation of any development permit shall be considered a violation of the Code. The violation shall be corrected prior to any public hearing or meeting on the issuance of any subsequent development permit for that project, unless a subsequent permit application seeks to amend the condition or time limitation that has been violated. Unless otherwise specified in the development permit, an approved use must comply with conditions and time limitations before implementing the approval, or before receipt of a certificate of occupancy or certificate of completion. The violation shall be subject to all enforcement procedures available as provided in the Code and by all applicable laws and ordinances.
- (f) *Fraud or omission in permit application.* If there is evidence that an application for development permit was considered wherein there was misrepresentation, fraud, deceit, or a deliberate error or omission, the village may initiate a rehearing to reconsider the development permit. The village may re-approve, approve with new conditions, deny, or take such other action on the development permit at the rehearing based on the standards in this chapter. If evidence of misrepresentation is discovered during the application review and approval process, the application shall be deemed incomplete and returned to the applicant.
- (g) *Development permits that are never implemented.* All development permits that are never implemented shall be either:
 - (1) Rescinded simultaneously with issuance of a subsequent development permit;
 - (2) Revoked after a public hearing; or
 - (3) Rescinded upon the expiration of the permit as set forth in table 30-225.

(h) Zoning in progress, hold on permits or certificate of uses. When an amendment to Chapter 30 or a rezoning of a parcel of land has been approved on first reading by the village council, no development application pending before the village with respect to the area or text which is the subject of the proposed amendment shall be approved unless the development application would be in conformity with both the existing legislation and the proposed legislation for a period of six months from the date of the approval on first reading by the village council. This period may be extended on time for an additional three months by resolution of the village council.

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 Mahoney, and upon being put to a vote, the vote was as follows:

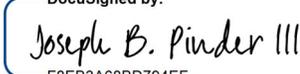
Mayor Joseph B. Pinder III	Yes
Vice Mayor Sharon Mahoney	Yes
Councilman Mark Gregg	Yes
Councilwoman Elizabeth Jolin	Yes
Councilman Henry Rosenthal	Yes

PASSED on the first reading this 14 day of December, 2023.

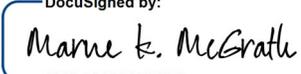
The foregoing Ordinance was offered by Councilmember Gregg, who moved for its adoption on second reading. This motion was seconded by Councilmember Rosenthal upon being put to a vote, the vote was as follows:

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 11 day of January, 2024.

DocuSigned by:

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 JOSEPH B. PINDER III, MAYOR

ATTEST:

DocuSigned by:

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 MARNE MCGRATH, VILLAGE CLERK

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

DocuSigned by:

 362BFAA7FDD417...
 JOHN J. QUICK, VILLAGE ATTORNEY

