



Islamorada, Village of Islands

LOCAL PLANNING AGENCY MEETING

March 13, 2023 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

AGENDA

I. CALL TO ORDER / ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. AGENDA: Requests for Deletion / Emergency Additions

IV. PUBLIC COMMENT

(This is general public comment. It provides an opportunity for the public to speak about matters not scheduled elsewhere on the agenda. The Chair opens public comment on agenda items throughout the meeting.)

V. CONSENT AGENDA

(All items on the Consent Agenda are considered routine by the committee and will be approved by one motion. There will be no separate discussion of these items unless a committee member so requests, in which event, the item will be moved to the Main Agenda.)

VI. PUBLIC HEARINGS

A. Chapter 30, Article VI, Division 11 - Alcoholic Beverage Use Permits
(Daniel J. Gulizio, Director of Development Services)

B. Chapter 30, Article VI, Division 6 - Home Occupations (Daniel J. Gulizio, Director of Development Services)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, ARTICLE Article VI, DIVISION 6 (HOME OCCUPATIONS), AND; 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

C. Chapter 30, Article VI, Division 13 - Mobile Food Vendors (Daniel J. Gulizio, Director of Development Services)

AN ORDINANCE OF THE ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING Chapter 30, ARTICLE VI, DIVISION 13 (MOBILE FOOD VENDORS), AND; 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.

- D.** Chapter 30, Article II - Definition of Lot Area (Daniel J. Gulizio, Director of Development Services)

AN ORDINANCE OF THE ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING Chapter 30, ARTICLE II, (SPECIFIC DEFINITIONS), AND; 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.

VII. CHAIR AND LOCAL PLANNING AGENCY MEMBERS

VIII. FUTURE AGENDA ITEMS

IX. DEVELOPMENT SERVICES DIRECTOR / VILLAGE MANAGER

- A.** Chapter 30, Article IV, Division 12 - Transfer of Development Rights (Daniel J. Gulizio, Director of Development Services)
- B.** Chapter 30, Article IV, Division 11 - Building Permit Allocation System (BPAS) (Daniel J. Gulizio, Director of Development Services)

X. VILLAGE ATTORNEY

XI. MOTIONS

XII. OTHER BUSINESS

XIII. ADJOURNMENT

Options for Viewing the Local Planning Agency Meeting:

The public is encouraged to watch the meeting on Monroe County's MCTV Comcast Channel 77. Alternatively, the public may view the meeting streamed live on the Village website from their personal computer, tablet or phone via the following link:

<https://islamoradafl.portal.civicclerk.com/>

Option 1: Email your comments.

1. Public comment should be submitted via email to: public.comment@islamorada.fl.us
2. The email should contain "Public Comment" in the subject line.
3. The name and address of the submitter shall be included in the email.
4. Public comment should be submitted by 9 a.m. the day before the meeting. Public comment will be sent to the LPA members for consideration prior to the meeting. Public comments will not be read during the meeting.

Option 2: Call in During the Meeting.

1. If phoning in, dial 305-224-1968 and enter the webinar **ID: 966 8605 3458** followed by #. When the Chair opens public comment pertaining to the agenda item you are interested in dial *9 to be recognized by the Zoom meeting monitor. The Monitor will call you by the last four digits of your phone number. **Please be sure to unmute your phone when you are called upon.**
2. If watching online via Zoom: Open the Zoom webinar link <https://zoom.us/j/96686053458> and follow the prompts to join the webinar. When the Chair opens public comment use the "raise your hand" feature to be recognized by the meeting monitor. Public comments will be heard in the order in which they are received.

ADA Assistance:

These meetings are open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the ADA Coordinator at (305) 664-6448 or by email at ADA@islamorada.fl.us at least 48 hours before the scheduled meeting



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article VI, Division 11 - Alcoholic Beverage Use Permits

Background:

The Local Planning Agency (LPA) previously discussed the proposed repeal of the Alcoholic Beverage Use Permit provisions contained in Chapter 30, Article VI, Division 11 of the Village Code on February 13, 2023. At that time, the LPA reserved decision and directed Planning staff to prepare the amendments needed to incorporate the proximity standards and review criteria into the Code.

Analysis:

Chapter 30 – Article VI, Division 11 (Alcoholic Beverage Use Permit) –

Currently, the state of Florida regulates the sale and consumption of alcoholic beverages through a State licensing program. In addition, the Village currently requires a separate Alcoholic Beverage Use Permit. Individual establishments, which involve the sale and/or consumption of alcoholic beverages are also regulated by the Village through Minor and Major conditional Use provisions contained within a variety of individual zoning districts. Since the Village has complete control over the approval process for establishments that engage in the sale and/or consumption of alcoholic beverages and the State already licenses such establishments, the administration of a second alcoholic beverage use licensing program accomplishes little.

The repeal of the Village Alcoholic Beverage Use Permit process would not appear to be inconsistent with any Goals and Objectives contained within the Comprehensive Plan.

Addendum - The proposed repeal of the existing Alcoholic Beverage Use Permit provisions contained within the Village Code was discussed at the February 13, 2023 Local Planning Agency (LPA) meeting. At that time, the members of the LPA reserved decision on the proposed amendments to afford staff the opportunity to draft needed amendments to the Village Code which incorporate both the proximity standards governing the operation of

businesses that involve the sale and/or consumption of alcoholic beverages and the review criteria, which guide the review of any requested variances from said proximity standards. These changes are attached.

All of the applicable proximity standards and review criteria currently contained within the Alcoholic Beverage Use Permit provisions within the Code have been retained and would continue to apply to establishments that involve the sale and/or consumption of alcoholic beverages.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully requests the Local Planning Agency recommend approval of the proposed Village Code Amendment.

Attachments:

1. ORDINANCE_Alcoholic_Beverage_Use_Permit_-1-19-2023 (1)
2. ABUP_Conditions_Revised_03-2023

ORDINANCE NO. 23-

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, BY REPEALING DIVISION 11 – ALCOHOLIC BEVERAGE USE PERMITS; 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, pursuant to Village Code Chapter 30, Article VI, Division 11 (Alcoholic Beverage Use Permit), Islamorada, Village of Islands regulates the sale and consumption of alcoholic beverages; and

WHEREAS, THE State of Florida already provides for the licensing of businesses which involve the sale and consumption of alcoholic beverages; and

WHEREAS, Islamorada, Village of Islands provides adequate and proper regulation for businesses which involve the sale and/or consumption of alcoholic beverages; and

WHEREAS, the repeal of Chapter 30, Article VI, Division 11 (Alcoholic Beverage Use Permit) is in the public interest.

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, Article VI, Division 11 (Alcoholic Beverage Use Permit) is deleted in its entirety.

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

DIVISION 11. - ~~ALCOHOLIC BEVERAGE USE PERMIT~~^[15]

Footnotes:

~~---(15)---~~

~~Cross reference~~—~~Noise permit; alcoholic beverages permit, § 42-42.~~

~~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.~~
- ~~(6) 5COP: Beer, wine and liquor, consumption on-premises and package sales.~~
- ~~(7) 5COP SRX: Restaurant, no package sales.~~
- ~~(8) 5COP SR: Restaurant, package sales.~~
- ~~(9) 5COP S: Motel, package sales.~~
- ~~(10) 5COP SBX: Bowling, no package sales.~~
- ~~(11) 5COP SPX: Boat, no package sales.~~
- ~~(12) 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](#)(l).~~

~~(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 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](#)(l).~~

~~(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.~~

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

~~(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.~~

~~(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.~~

~~(Ord. No. 03-05, § 1(6.10.1), 3-27-2003; Ord. No. 15-03, § 2, 2-12-15)~~

Secs. 30-1462—30-1479. - 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 _____, who moved for its adoption on first reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

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

PASSED on the first reading this _____ day of _____, 2023.

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

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

PASSED AND ADOPTED on the second reading this ____ day of _____, 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

DIVISION 11. - ALCOHOLIC BEVERAGE USE PERMIT – Standards of Review

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 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 to ensure that such uses will not have an adverse impact on the health, safety and welfare of the citizens and residents of the village.

(B) Proximity to places of worship, schools and childcare facilities.

(1) No person shall conduct any business involving the production, manufacture, brewing or sale of alcoholic beverages within three hundred feet of any established place of worship, school and/or childcare 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 childcare facility and used as a part of the place of worship, school and/or childcare 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 Village Council shall consider the following factors:

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

b. Other nonresidential uses adjacent to or between the property of the proposed establishment and the facilities described in subsection (1) above;

c. Whether or not the property of the proposed establishment is separated from the facilities described in subsection (1) above by a canal, channel, creek, or U.S. 1 (Overseas Highway);

d. Whether or not 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;

e. Whether or not 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;

f. Whether or not the proposed use complies with Article IV, Division 5 of this chapter (Concurrency Management); and

g. Whether or not the design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

(C) Approval by Village Council. The Village Council may grant a relaxation of the above proximity standards based on reasonable conditions considering the criteria outlined herein.

(D) Appeals. The applicant, or any aggrieved person who has opposed the relaxation of the above proximity standards, 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.



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article VI, Division 6 - Home Occupations

Background:

The Local Planning Agency (LPA) originally considered the proposed amendment of the regulations dealing with Home Occupations on February 13, 2023. The LPA reserved decision at that time in order to afford staff an opportunity to resolve any State preemption questions with outside counsel.

Analysis:

The regulation of Home Occupations is governed by Article VI, Division 3 of the Land Development Regulations. The current approach fails to include a definition for Home Occupations, allows for the operation of multiple home occupations within a single residence, permits up to 50% of the residence to be occupied by the Home Occupation use, and fails to restrict the type of Home Occupation permitted. As a result, under the current Code, a Home Occupation can involve virtually any use(s) including a wide variety of uses that have the potential to adversely impact surrounding residential development.

The proposed amendments provide reasonable safeguards which properly balance the right of a homeowner to maintain a home occupation with the protection of surrounding neighbors. These measures are consistent with the Goals and Objectives of the Comprehensive Plan.

Addendum - The Local Planning Agency (LPA) considered the attached modifications to the Home Occupation provisions contained within the Village Code on February 13, 2023. At that time, the LPA reserved decision to afford staff the opportunity to discuss with outside counsel any potential conflicts with the State of Florida's partial preemption of local home occupation regulatory provisions. Staff has reviewed the proposed changes with outside counsel and is prepared to address any questions associated with the proposed amendments.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully requests that the Local Planning Agency recommend approval of the proposed Village Code Amendment.

Attachments:

1. ORDINANCE_Home_Occupations_03-23-2023

ORDINANCE NO. 23

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, LAND DEVELOPMENT REGULATIONS RELATED TO THE OPERATION OF HOME OCCUPATIONS; 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 development trends, economic conditions, and community needs evolve it is imperative to update existing regulatory controls to safeguard the public interest; and

WHEREAS, demographic trends and housing preferences have increasingly conflicted with existing regulatory controls related to single-family residential development; and

WHEREAS, it is in the public interest to adjust the manner in which the Village regulates and defines single-family residential development including the definition of principal and accessory structures along with home occupations.

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 underlined;

deleted text is shown as ~~strikethrough~~

DIVISION 3. - HOME OCCUPATIONS

Home Occupation – means an office activity conducted within a single-family residence in a single-family residential district by the residents thereof as an accessory use within the main dwelling that does not change the character of the building as a residence or the character of the site as a residential plot. The home occupation shall not occupy more than 25% of the gross floor area of the structure or 500 square feet, whichever is less. Parking for the home occupation use shall be installed, landbanked or screened from view pursuant to the direction of the Director of Planning and Development Services or their designee. The following uses shall be considered home occupations: the office of a single physician, dentist, chiropractor, lawyer, architect, engineer, surveyor, accountant, financial planner, insurance agent or tutor, provided that instruction is limited to a single pupil at one time. Other similar uses, which do not alter the character of the house as a residence, may only be permitted after the review and approval of the Village Council. In no case shall the following uses be deemed permitted home occupations; bars, taverns, nightclubs, restaurants, minor restaurants, fast-food restaurants, convenience markets, veterinarian, dance studio, real estate broker, musical instruction groups, art or photo galleries, funeral parlor/home, barbershops, beauty parlors, adult homes, nursing homes, tattoo parlor, any use involving outside storage, including the outside storage of registered vehicles, outside display or any retail use.

Sec. 30-1191. - Intent and purpose.

It is the intent and purpose of this division to allow homes to be used for low intensity business purposes under limited circumstances. It is intended that this division will permit persons to use their homes to conduct businesses as long as the residential nature of the neighborhood is not disturbed by substantial traffic, parking or nuisance impacts.

(Ord. No. 01-13, § 2(6.2.1), 7-24-2001)

Sec. 30-1192. - Home occupations permitted in residential dwelling units located in residential and commercial zoning districts.

Notwithstanding any other provision of this chapter to the contrary, a single home occupation ~~one or more home occupations~~ shall be a permitted use in any lawfully established residential dwelling unit provided the home occupation meets the criteria set forth in this division.

(Ord. No. 01-13, § 2(6.2.2), 7-24-2001)

Sec. 30-1193. - Criteria for home occupations.

A home occupation permit may be issued to the owner, tenant, lessee, or occupant of a lawfully established residential dwelling unit, when the home is used only as a location for one business ~~or more businesses~~ conducted for the gain or support of the occupant of the residence. The planning and development services department may permit home occupations provided the proposed use meets the following criteria:

- (1) The home occupation employs no more than two persons at the residence who are not occupants of the residential dwelling unit.
- (2) The use of the residential dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall not change the essential residential character of the property. The combined area of principal and accessory use space devoted to the home occupation shall not exceed twenty-five percent (25%) or five hundred (500) square feet, whichever is less, ~~50 percent~~ of the floor area of the principal use structure.

(3) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, including outside storage or signs pertaining to the home occupation. ~~Notwithstanding the foregoing, nothing contained in this division shall prohibit the lawful storage of boats, boat trailers, and associated equipment used in the normal course of business of fishing guide services.~~

~~(4) Stock in trade may be displayed or sold on the premises; however, the display or storage area shall not exceed the maximum floor area restriction set forth in subsection (2) of this section. In no event, however, shall the property owner display or store the stock in trade outside the dwelling unit or accessory structure. The stock in trade shall not be visible from outside the dwelling unit or accessory structure.~~

(5) Vehicular traffic shall not exceed the authorized average daily trips for the underlying residential use. No more than two additional parking spaces shall be provided to service the needs of the home occupation, which parking spaces shall be located on-site and shall meet all design regulations for residential parking otherwise applicable under this chapter. ~~All vehicles kept on the premises or parked overnight in connection with the home occupation, including commercial vehicles for delivery, must comply with off-street parking and driveway standards of this chapter. Any signage on commercial vehicles shall conform to the provisions of the sign regulations of this chapter.~~ Parking of commercial vehicles which have greater than 2½ tons of gross load weight shall be prohibited.

(6) The home occupation use shall not generate traffic, noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district. No home occupation shall be conducted which requires manufacturing, assembly or construction which by its nature or character disrupts, disturbs or adversely alters, changes or modifies the residential nature or character of the neighborhood.

(Ord. No. 01-13, § 2(6.2.3), 7-24-2001)

Sec. 30-1194. - Permit.

(a) The applicant shall submit a completed application for a home occupation permit to the planning and development services department. An application fee, as established by resolution of the village council, shall be submitted in conjunction with the home occupation permit application. Upon a determination that the criteria contained in this division have been met, the director of planning and development services department may issue a home occupation permit to the applicant in accordance with the procedure set forth in section 30-1195. The following information shall be required of all persons making application for a home occupation permit:

(1) Name and address of applicant.

(2) Name and address of the homeowner or occupant if different than the applicant.

(3) Legal description of the property where the home occupation is to be conducted.

(4) Sketch plan of the property where the home occupation is to be conducted, and the location of the home occupation use within the principal and accessory structures.

(5) Nature and type of business or businesses to be conducted.

(6) Printed address labels for notification of the owners of all adjacent properties, as indicated by the current county property tax roll, including property separated by canals and roadways. If adjacent property is in condominium ownership, the condominium association may be substituted for all property owners.

(b) In issuing a home occupation permit, the director of planning and development services or designee may prescribe appropriate conditions and safeguards as are necessary to protect the public interest and ensure harmony with the intent and purpose of this division. If an applicant fails to meet such conditions, the home occupation permit may be revoked by the director upon

providing the applicant with written notice of the revocation. The applicant may appeal the revocation of the home occupation permit to the village planning commission. No home occupation permit issued pursuant to this division shall be transferable, assignable, or otherwise alienable.

(Ord. No. 01-13, § 2(6.2.4), 7-24-2001)

Sec. 30-1195. - Procedure for issuance of permits.

A home occupation permit shall only be granted based on a written determination by the director of planning and development services or designee that the proposed use meets all of the criteria set forth in this division, and all other applicable requirements contained in this chapter. Prior to issuance of the home occupation permit, the director of planning and development services or designee shall give the applicant and adjacent property owners notice by certified U.S. mail, return receipt requested, of the village's intent to issue the permit. Within 30 days of the date of the mailing of the notice of intent, a public hearing on the home occupation permit may be requested in writing to the director of planning and development services or designee, by the applicant or an adjacent property owner. If a public hearing is requested, the village shall schedule a public hearing of the planning commission. The hearing shall be conducted in accordance with section 30-281. The director of planning and development services or designee shall issue the home occupation permit if a public hearing is not requested in accordance with this section.

(Ord. No. 01-13, § 2(6.2.5), 7-24-2001)

Secs. 30-1196—30-1220. - Reserved.

Section 3. **Transmittal.** Pursuant to Sections 163.3184, Florida Statutes, the Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Economic Opportunity (the "DEO").

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 become effective until a Notice of Intent has been issued by DEO finding the Comprehensive Plan Amendment to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Comprehensive Plan Amendment shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Comprehensive Plan Amendments to be in compliance.

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

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

PASSED on the first reading this ____ day of _____, 2023.

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

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

PASSED AND ADOPTED on the second reading this ____ day of _____, 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



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article VI, Division 13 - Mobile Food Vendors

Background:

The Village previously established a Mobile Food Truck Pilot Program by resolution on March 5, 2020 (Resolution No. 20-03-19). This program expired in March, 2022. The attached draft code provisions seek to codify the former Pilot Program with standards that mirror the Pilot Program's original regulatory approach.

Analysis:

The proposed code provisions provide definitions for Mobile Food Vendors (Food Trucks) as distinguished from Canteen Trucks and Food Carts. The regulation of food trucks includes provisions for both special events and commercial use. Operating standards are also provided to address siting, hours of operation, litter, setbacks, signage, parking, and ancillary retail sales.

These standards were based upon the lessons learned during the Village's Pilot Program, in addition to an analysis of similar approaches from other communities within the State of Florida. It is the belief of staff that these regulations strike the proper regulatory balance and will allow for the operation of Food Trucks where appropriate while protecting the rights of surrounding property owners.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully recommends that the Local Planning Agency recommend approval of the proposed Village Code Amendment.

Attachments:

1. Draft_03_2023

DIVISION 14 – Mobile Food Vendors (Food Trucks)

Sec. 30-1493. – Purpose and Intent.

The purpose and intent of this section is to establish reasonable land use and zoning regulations for real property upon which a Mobile Food Vendor (Food Truck) is authorized to operate within the Village of Islamorada. Unless authorized pursuant to these regulations, the operation of Mobile Food Vendors (Food Trucks) is prohibited and unlawful. These provisions are not intended to prohibit Mobile Food Vendors (Food Trucks) from operating within the Village of Islamorada or to require the licensing of such uses in violation of any preemption by Florida Statutes pursuant to section 509.102.

Sec. 30-1494. – Definitions.

Mobile Food Vendor (Food Truck) means a vehicle that is a public food service establishment that is self-propelled or otherwise moveable from place to place, and which includes self-contained utilities, including, but not limited to, gas, water, electric, or liquid waste disposal.

(OR)

Mobile Food Vendor (Food Truck) means a vehicle that dispenses food. These vehicles may cook, prepare, and assemble food items on or in the units and serve a full menu. Mobile Food Vendors (Food Trucks) are self-propelled or otherwise movable from place to place.

Canteen Truck means a vehicle which sells prepackaged, pre-cooked foods including pre-packaged drinks, and incidental sales of pre-packaged frozen dairy or frozen fruits and vegetables. No preparation or assembly of food may take place on or in the vehicle. However, the heating of pre-cooked food is permitted. (Open flame and/or grease laden vapor is strictly prohibited.)

Food Cart means a mobile kitchen vehicle set up on the street to prepare and sell street food to passers-by. Food carts are not self-propelled and do not travel under their own power.

Sec. 30-1495. – When Permitted.

Mobile Food Vendors (Food Trucks), Canteen Trucks and Food Carts shall only be permitted in accordance with the following standards and regulations:

A. Mobile Food Vendors (Food Trucks).

(1) Special Events. Mobile Food Vendors (Food Trucks) for special events shall be permitted in any district with the issuance of a Temporary Use Permit in accordance with the operating standards contained herein. Temporary Use Permits for Mobile Food Vendors shall be limited to a maximum of four (4) special events per year.

(2) Commercial Use. Mobile Food Vendors (Food Trucks) shall be permitted in a Village Center (VC), Tourist Commercial (TC), and Mobile Home Park (MH) District subject to site plan

review, in accordance with the operating standards contained herein, and pursuant to any additional requirements imposed pursuant to the underlying zoning district.

B. Canteen Trucks.

Canteen trucks shall be exempt from the provisions of this section, provided such vehicles are only parked for a maximum of fifteen (15) minutes or less. Canteen trucks shall be prohibited from operating within any right-of-way and may only operate on private property within a non-residential zoning district.

C. Food Carts.

Food carts may be permitted on a temporary and short-term basis subject to the issuance of a Temporary Use Permit.

Sec. 30-1496. – Operating Standards.

(A) Special Events. The following operational standards shall apply to the issuance of a Temporary Use Permit for a Mobile Food Vendor (Food Truck):

- (1) Mobile Food Vendors (Food Trucks) shall be setback a minimum distance of fifty (50) feet from U.S. 1.
- (2) The use of polystyrene foam (Styrofoam) and single use plastics shall be prohibited.
- (3) Mobile Food Vendors (Food Trucks) shall not operate within a Village Park, Village parking lot, or Village right-of-way without approval from the Village and the issuance of any and all required permits.
- (4) Mobile Food Vendors (Food Trucks) shall be prohibited from operating within the Fills area located between mile marker 72 and mile market 79.7.
- (5) Mobile Food Vendors (Food Trucks) shall be prohibited from operating on any vacant or abandoned property.
- (6) Mobile Food Vendors (Food Trucks) shall be prohibited from selling or dispensing food and/or beverages to customers in a moving vehicle or from otherwise engaging in drive-up sales.
- (7) Mobile Food Vendors (Food Trucks) shall not be immobile and are required to be moved at the conclusion of the day.
- (8) Mobile Food Vendors (Food Trucks) shall not interfere with vehicular and pedestrian movements, block access to loading/service areas, driveways, sidewalks, or landscaped areas.

(9) The vendor shall maintain receptacles, adjacent to the Food Truck, for litter associated with the business, and shall remove all litter, debris, and other waste attributable to the business on a daily basis.

(10) No food shall be sold, prepared, or displayed outside of the Food Truck.

(11) The Mobile Food Vendor (Food Truck) shall be prohibited from discharging waste, fat, oil, grease, or such similar substances from the vehicle. All such substances related to or generated from the vehicle shall be taken with the vehicle when the vehicle leaves the subject premises.

(12) The Mobile Food Vendor (Food Truck) shall be located on private property. No portion of the Food Truck shall extend onto an adjacent property or into any right-of-way.

(13) Vendors shall comply with all applicable Federal, State and city laws, regulations, and ordinances, including those regulating noise, signage, and loitering.

(14) With the exception of ancillary sales of branded items consistent with the food or vendor, such as a cup or tee shirt that bears the name of the company, restaurant or organization engaged in mobile food vending, the sale of products other than food and beverages under the permit authorized in this section is prohibited.

(15) No more than two (2) Mobile Food Vendors (Food Trucks) are allowed to operate simultaneously per site.

(16) No overnight parking of the Mobile Food Vendor (Food Truck) shall be allowed on-site.

(17) Mobile Food Vendors (Food Trucks) shall not be located on private property upon which there are unpaid liens or open code violations.

(B) Commercial Use. Unless permitted pursuant to a Temporary Use Permit, the following operational standards shall apply to all Mobile Food Vendors (Food Trucks) operating within a Village Center (VC), Tourist Commercial (TC), and Mobile Home Park (MH) zoning district.

(1) Mobile Food Vendors (Food Trucks) shall be setback a minimum distance of fifty (50) feet from U.S. 1.

(2) The use of polystyrene foam (Styrofoam) and single use plastics shall be prohibited.

(3) Mobile Food Vendors (Food Trucks) shall be prohibited from operating within the Fills area located between mile marker 72 and mile market 79.7.

(4) Mobile Food Vendors (Food Trucks) shall be prohibited from operating on any vacant property or abandoned business location.

(5) Mobile Food Vendors (Food Trucks) shall be prohibited from selling or dispensing food and/or beverages to customers in a moving vehicle or from otherwise engaging in drive-up sales.

(6) The use of balloons, streamers, flashing lights, or other similar devices to attract customers shall be prohibited. Banners attached to the vehicle shall be permitted provided they are no higher than fifteen (15) feet in height from the ground and no wider or longer than the width of the vehicle.

(7) Parking Restrictions: Mobile Food Vendors (Food Trucks) shall not impede or interfere with on-site circulation. Further, Mobile Food Vendors (Food Trucks) shall be prohibited from operating in the following locations:

- (a) on or in the public right-of-way,
- (b) fire lanes or adjacent to a fire hydrant;
- (c) handicapped parking zones;
- (d) driveway aisles, no parking zones or loading areas;
- (e) Landscaped areas and buffer yards.

(8) Mobile Food Vendors (Food Trucks) shall not be immobile and are required to be registered and otherwise moveable at all times.

(9) Mobile Food Vendors (Food Trucks) shall not interfere with vehicular and pedestrian movements, block access to loading/service areas, driveways, sidewalks, or landscaped areas.

(10) The vendor shall maintain receptacles, adjacent to the Food Truck, for litter associated with the business, and shall remove all litter, debris, and other waste attributable to the business on a daily basis.

(11) No food shall be sold, prepared, or displayed outside of the Food Truck.

(12) The Mobile Food Vendor (Food Truck) shall be prohibited from discharging waste, fat, oil, grease, or such similar substances from the vehicle. All such substances related to or generated from the vehicle shall be taken with the vehicle when the vehicle leaves the subject premises or pumped off-site and disposed of properly at a wastewater treatment facility.

(13) Adequate sanitary facilities must be provided to serve customers and employees on site.

(14) No portion of the Food Truck shall extend onto an adjacent property or into any right-of-way.

(15) Mobile Food Vendors (Food Truck) must be located on a paved or gravel surface.

(16) Mobile Food Vendors (Food Truck) that occupy any site parking space(s) shall only utilize those parking space(s) that are not required for the host business location, or any business-required parking space on the site.

(17) Vendors shall not use loud music, amplification devices, bullhorns, crying out, or any other audible methods to gain attention.

(18) With the exception of one (1) A-frame sign located directly next to the Mobile Food Vendor (Food Truck) customer service area, there shall be no signage used by vendors except for what is allowed on the Food Truck itself.

(19) With the exception of dining furniture approved through the administrative site plan, vendors are prohibited from locating, placing, or putting personal property outside of the mobile food vending vehicle (food truck), including but not limited to, fixtures, and equipment.

(20) Vendors shall comply with all applicable Federal, State, and Local laws, regulations, and ordinances, including those regulating noise, signage, and loitering.

(21) With the exception of ancillary sales of branded items consistent with the food or vendor, such as a cup or tee shirt that bears the name of the company, restaurant or organization engaged in mobile food vending, the sale of products other than food and beverages under the permit authorized in this section is prohibited.

(22) Unless otherwise approved as part of a Temporary Use Permit issued under Chapter 30, Article V, Division 8 of the Village code, no more than one (1) Mobile Food Vendor (Food Truck) is allowed to operate per site.

(23) Mobile Food Vendors (Food Trucks) shall not be located on private property upon which there are unpaid liens or open code violations.

(24) Additional permits and licenses. A copy of the appropriate license(s) issued from the Florida Department of Business & Professional Regulation (Division of Hotels and Restaurants) shall be maintained on the Mobile Food Vendor (Food Truck) at all times when the vehicle is in operation on real property located within the Village and shall be made available for inspection upon request by the city's law or code compliance officers.

Sec. 30-1497. – Revocation of Permit.

The Village of Islamorada reserves the right to revoke any Temporary Use Permit or approval for the operation of a Mobile Food Vendor (Food Truck) in the event of violation of these provisions.



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article II - Definition of Lot Area

Background:

The Village Land Development Regulations (LDRs) include a wide variety of definitions within Article II (Rules of Construction). There is a clear inconsistency between the definition for "Buildable Area" and "Lot Area." The proposed amendment reconciles these differences and establishes a consistent standard in the definition of Buildable Area and Lot Area.

Analysis:

Sec. 30-32 of the Village Code includes definitions for both Buildable Area and Lot Area.

Buildable Area is defined as: *"the upland portion of a lot or parcel of land that can be occupied by principal buildings and such accessory buildings or uses customarily incidental to it, **exclusive of any public dedications, privately owned submerged lands and tidally inundated mangroves.**"*

Lot Area is defined as: *"the total horizontal plane area contained within the lot lines expressed in square feet or acres, exclusive of any public dedications but **including privately owned submerged lands and tidally inundated mangroves.**"*

It makes little sense to include privately owned submerged lands and tidally inundated mangroves within the definition of lot area. Aside from the inconsistency with the definition of Buildable Area, the inclusion of underwater lands and tidally influenced mangroves within the definition for lot area is inconsistent with sound planning practice and the Village's ongoing responsibility to protect near shore water quality, natural resources, natural shoreline, baches and berms, wetlands, native vegetation, marine habitats...etc.

Under the current definition for lot area, a parcel of land could be 95% under water and still qualify as a potentially buildable lot based on lot area. It is recommend that the definition of lot

area be amended consistent with the definition of Buildable Area as detailed below:

Area, lot is the total horizontal plane area contained within the lot lines expressed in square feet or acres, exclusive of any public dedications, ~~but including~~ privately owned submerged lands and tidally inundated mangroves.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully recommends that the Local Planning Agency recommend approval of the proposed amendment.

Attachments:

1. ORDINANCE_Lot_Area_Defintion_03-2023

ORDINANCE NO. -

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, LAND DEVELOPMENT REGULATIONS RELATED TO THE DEFINITION OF LOT AREA; 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 public health, safety, and welfare; and

WHEREAS, Village Land Development Regulations include provisions for the obtaining of a variance in order to provide relief from strict application of the Land Development Regulations that would result in undue hardship; and

WHEREAS, the proper definition of lot area is critical to achieving the goals and objectives of the Comprehensive Plan and the protection of public health, safety, and welfare of the public.

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, Article II (Specific Definitions) is hereby modified as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as strikethrough
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Sec. 30-32. – Specific definitions.

Area, lot is the total horizontal plane area contained within the lot lines expressed in square feet or acres, exclusive of any public dedications, ~~but including~~ privately owned submerged lands and tidally inundated mangroves.

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

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

PASSED on the first reading this ____ day of _____, 2023.

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

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

PASSED AND ADOPTED on the second reading this ____ day of _____, 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



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article IV, Division 12 - Transfer of Development Rights

Background:

The regulation of the Transfer of Development Rights (TDRs) is governed by Chapter 30, Article IV, Division 12 (Transfer of Development Rights) of the Village Code. Over the last several months, the Village Council has held a series of discussions on potential amendments to the regulation of TDRs. The Village Council has tasked staff with the preparation of amendments to the current regulation of TDRs in order to better meet today's needs.

The proposed changes seek to address the ongoing issues associated with the transfer of development rights within the Village.

Analysis: According to **Sec. 30-501** of the Village Code, the purpose and intent of the Transfer of Development Rights Ordinance is *"to permit and regulate the transfer of development rights (TDRs) between properties within the village in order to ensure that all development is consistent with the goals, objectives and policies of the comprehensive plan. Transfer of development rights will aid in the preservation of environmentally sensitive lands through the removal of existing dwelling units or rights based on permitted densities, the redistribution of existing residential dwelling units to achieve planned densities, the retirement of development rights without increasing the overall amount of development, the encouragement of the placement of conservation easements on environmentally sensitive and flood-prone lands, the facilitation of appropriate redevelopment and revitalization of the village center (VC) zoning district by the concentration of mixed use activities, the preservation of existing affordable housing and encouragement of additional affordable housing, and a reduction of negative environmental impacts from development in balance with protection of private property rights."*

Pursuant to **Sec. 30-503**, there are three (3) types of development rights that may be transferred including:

(1) Intensity and Density including the *“transfer of intensity (FAR) from vacant nonresidential and density from residential sender sites to vacant nonresidential and residential receiver sites that meet the minimum lot area but are nonconforming as to density, so as to permit the development of the receiver site”* and,

(2) Nonresidential Floor Area. and,

(3) Residential Dwelling Units. It is noted that *“Development or redevelopment of additional residential dwelling units shall only be permitted within specifically denoted zoning districts following the successful transfer of residential dwelling units to eligible receiver sites.”*

In general terms, the transfer of development rights is guided by three basic elements including:

(1) Zoning. The Code provides specific limitations on the transfer of development rights from one zoning district to another. These limitations include guidelines for the transfer of nonresidential floor area (Sec. 30-505), residential dwelling units and density (Sec. 30-506) and hotel/motel units (Sec. 30-506).

(2) Habitat Classification. Pursuant to Sec. 30-504 (b) of the Village Code, the *“receiver site shall be less environmentally sensitive than the sender site, according to a vegetation survey and/or a habitat analysis conducted by a certified biologist, and verified unless otherwise exempted or limited by the director of planning and development services or his designee, pursuant to habitat classifications described in subsection 30-1616(b)(2) of this Code, whereby the following conditions additionally apply:*

(1) Transfer shall be permitted from Class I parcels to Class II or Class III parcels;

(2) Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and

(3) Transfer shall be permitted from Class III parcels to Class III parcels.”

(3) Shoreline Proximity. Pursuant to Sec. 30-505 (6) and Sec. 30-506 (8)(b), *“Parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines.”*

In addition to the above guidelines, the existing TDR Ordinance establishes restrictions related to the transfer of development rights to a designated VE Flood Zone, hotel/motel units, market rate units, and affordable units including mobile homes and recreational vehicles (RVs). Specifically:

- Sec. 30-505 (5) and Sec. 30-506 (4) state that *“The structure cannot be placed in a VE flood zone on the Receiver Site.”*
- Sec. 30-506 (8)(a) states that *“Hotel and motel unit TDRs shall be transferable only to hotel and motel units, and furthermore parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines;”*

- Sec. 30-506 (8)(b) states that *“Market rate dwelling unit TDRs shall be transferable only to market rate dwelling units or affordable dwelling units, and furthermore parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines;”*
- Sec. 30-506 (8)(c) states that *“Affordable dwelling unit TDRs, including all mobile homes and recreational vehicle spaces from approved mobile home parks, shall be transferable only as affordable dwelling units, in accordance with affordability standards and definitions as specified in section 30-32 of this Code.”*

Finally, it is noted that, following the transfer of development rights, additional development of the Sender Site is prohibited with the exception of affordable housing. Specifically, pursuant to Sec. 30-506 (5):

“Regardless of the on-site allocated densities available on a lot, exercising the TDR process to remove dwelling units, transfer building permits or density from a lot shall, result in a permanent reduction of density, and no additional density to that remaining on the sender site after the transfer takes place shall be permitted on the sender site. Notwithstanding the foregoing, affordable housing and/or nonresidential floor area may be provided only through the Building Permit Allocation System in instances following the transfer of a hotel or motel unit, but in no case shall the sender or receiver site exceed the permitted density or intensity provided for within division 2 of article V of this chapter. Each TDR shall require that a declaration of covenants, conditions and restrictions, as approved by the village attorney, be placed on the sender site, restricting densities to the number of market-rate, hotel or motel units remaining on the sender site after the transfer takes place.”

Under current provisions, the transfer of residential intensity and/or density has been problematic and little used. The intent of these provisions was to allow for the transfer of surplus lot area from a Sender Site to an undersized Receiver Site. Secondly, the intent was to allow for the transfer of floor area or surplus Floor Area Ratio (FAR) from the Sender Site to the Receiver Site. Due to a combination of ambiguous terminology and somewhat convoluted restrictions, the transfer of residential intensity and/or density has been rarely used.

While the process guiding the transfer of non-residential floor area is less ambiguous under the Code than residential intensity/density, this provision has also been used infrequently. By far, the primary purpose of the current TDR Ordinance has been to facilitate the transfer of residential dwelling units.

As the number of available building permits decreases with the sunset of the Building Permit Allocation System (BPAS), the pressure on existing development patterns will increase as will the pressure to provide greater flexibility with the transfer of development rights. However, any changes to the TDR Ordinance should be evaluated based upon their consistency with the purpose and intent of the ordinance – *“to ensure that all development is consistent with the goals, objectives and policies of the comprehensive plan.”* Additional

purposes to the Ordinance include:

- the preservation of environmentally sensitive lands,
- the redistribution of existing residential dwelling units to achieve planned densities,
- the retirement of development rights without increasing the overall amount of development,
- the encouragement of the placement of conservation easements on environmentally sensitive and flood-prone lands,
- the facilitation of appropriate redevelopment and revitalization of the village center (VC) zoning district by the concentration of mixed-use activities,
- the preservation of existing affordable housing and encouragement of additional affordable housing, and
- a reduction of negative environmental impacts from development in balance with protection of private property rights

As discussed previously, the Village Comprehensive Plan consists of ten (10) Chapters or Elements along with nineteen (19) goals and 102 Objectives. The first goal of the Comprehensive Plan is entitled:

Goal 1-1: Implement Future Land Use Vision. It states:

That the Village incorporated to create a Comprehensive Plan to reclaim the Keys by conserving, preserving, and retaining our remarkable assets—our waters and natural environment—and our quality of life;

That the Village is and must continue to be synonymous with sport fishing, diving, the Everglades National Park, the living coral reef, Indian Key, Lignumvitae Key, Shell Key, Windley Quarry, and many species of fish and fowl;

That the Comprehensive Plan must further understanding of the ecological limits of our Keys and prohibit any further degradation of our natural resources by incompatible land and marine activities such as casino boats, sea planes, personal watercraft, and other watercraft that are operated improperly; and

That the Comprehensive Plan must describe public and private actions needed to protect and retain the Village's waterways and natural resources comprising our unique ecosystem as well as preserve the quiet solitude of the backcountry.

Chapter 3 of the Comprehensive Plan is the Housing Element. Goal 3-1 entitled *Facilitate Provision of Quality Housing*, includes Objective 3-1.1 Provide adequate affordable housing to meet current and future needs.”

Chapter 5 of the Comprehensive Plan is the Coastal Management Element. It includes one (1) goal and nineteen (19) Objectives related to the protection of coastal resources, wetlands, estuaries, living marine resources, and wildlife habitats (Objective 5-1.1), restricting development within wetlands (Objective 5-1.3), eliminating the loss of undisturbed wetlands (Objective 5-1.4), the protection of natural shorelines, including beaches and berms (Objective

5-1.5), the implementation of policies that control pollutant discharges into surface waters (Objective 5-1.7), avoiding population concentrations in the coastal high hazard area (Objective 5-1.9), the regulation of public access to the shoreline (Objective 5-1.12), and the identification of site development techniques that minimize loss due to flooding (Objective 5-2.4).

Chapter 6 (Conservation Element) includes one goal and fourteen (14) Objectives related to air quality (Objective 6-1.1), the availability of potable water (Objective 6-1.2), the protection of floodplains (Objective 6-1.3), the protection of natural resources (Objective 6-1.4), surface water quality and quantity (Objective (6-1.5), the protection and preservation of wetlands (Objective 6-1.6), the protection of native vegetation and marine habitats (Objective 6-1.7), habitat restoration (Objective 6-1.8), the protection of fisheries, wildlife, and wildlife habitats (Objective 6-1.9), and the management of wastes (Objective 6-1.11), among other Objectives.

Chapter 7 of the Comprehensive Plan is the Recreation and Open Space Element. It includes one (1) Goal and four (4) Objectives related to recreation and open space facilities (Objective 7-1.1) and the protection of open space systems (Objective 7-1.3).

Chapter 10 of the Comprehensive Plan is the Monitoring and Review Criteria Element. It establishes a series of objectives related to the establishment of criteria for a 7-year evaluation of the plan (Objective 10-1.2) and annual evaluations of Village limited growth objectives and policies.

Performance –

The purpose of a Comprehensive Plan is to serve as a blueprint for development and to guide both policy and decision-making. Monitoring and periodic updates are essential elements of an effective plan in order to both measure progress and ensure that Village actions are consistent with established goals and objectives. Since the TDR Ordinance is intended to advance the goals and objectives of the comprehensive plan, it is important to evaluate the effectiveness of current efforts prior to modification of the Ordinance.

In previous discussions with the LPA, the increase in Village total population and population density (measured in people/square mile) has been documented. In short, total population since the 1970's has increased from 1,251 residents to 7,107 (+468%). In addition, population density for the Village is 1,102 per square mile. This is 10x's denser than the United States (94 people/square mile), 13x's more dense than Monroe County (74.3 people/square mile), and 171 % more dense than the State of Florida (406 people per square mile).

In fact, if Islamorada, Village of Islands, was a *country*, it would be the 7th densest country on Earth, just slightly less dense than Bangladesh (1,239 people/square mile) and significantly more dense than Palestine (759 people/square mile – Source: World Atlas).

The amount of habitat loss also paints a disturbing picture. According to recent estimates, the Village has lost approximately 77% of its tropical hardwood hammock (1,600 acres) along with more than 26% of its mangroves (1,000 acres).

Additional environmental indicators reflect a need for both improvement and change including the collapse of the local conch population, an estimated 93% decline in nearshore corals, significant reductions in mean fish size, seagrass declines, emerging contaminant detection in local fish populations (including pharmaceuticals), and increasing traffic volume and

congestion, to name just a few. The Village is also mandated by the State to improve canal water quality and has pursued a series of improvement projects in recent years to address poor water quality across its existing 63 canals.

Collectively, these trends reflect the need for improved policy and decision-making that can better support the goal of “*conserving, preserving, and retaining our remarkable assets—our waters and natural environment—and our quality of life.*”

Recommendations –

(1) Residential Intensity and Density Transfers. The transfer of residential intensity and density has proven to be ineffective. If successful, the transfer of lot area and/or floor area between parcels will likely result in an overall increase in the intensity and density of development inconsistent with the goals and objectives of the comprehensive plan.

In light of the continued decline in local environmental resources, the lack of adequate density controls across existing residential zoning districts, and the ongoing loss of market based affordable housing stock, it is recommended that the transfer of residential intensity and/or density be repealed from the current TDR Ordinance.

(2) Zoning District Limitations. One of the three primary mechanisms of guiding TDRs involves a series of restrictions on the transfer of development rights between zoning districts. These restrictions apply to non-residential transfers, residential intensity and density transfers, and residential dwelling unit transfers.

While this approach has been largely successful in guiding development, it is cumbersome and inconsistent in its application. A simpler approach would allow for the transfer of development rights between zoning districts provided the development right transferred is permitted in both the Sender and Receiver Sites. This will help to both facilitate the transfer of development rights and, in the process, preserve more open space consistent with the intent of the TDR Ordinance.

However, this approach should be supplemented with additional measures needed to protect the integrity of the Village’s housing stock, including its supply of affordable and moderate housing units. Two additional measures are recommended including (1) the establishment of Floor Area Ratio (FAR) standards to protect community character within individual communities and (2) limitations on the amount of development rights transferred. Specifically, the total gross floor area and number of bedrooms associated with the Sender Site should be identified and limited in connection with the development of the Receiver Site. Finally, the future expansion of the amount of development on the Receiver Site should be permitted consistent with existing dimensional standards, including a newly established FAR.

These measures will help to both protect existing community character and the diversity of the region’s housing stock. A diversified housing stock is a critical component of the Fair Housing Act and is needed to ensure an adequate supply of housing for local workers, emergency service personnel, and teachers to name just a few constituencies.

(3) Habitat Limitations. The TDR Ordinance currently establishes limitations on the transfer of development rights based on habitat considerations. Specifically, Sec. 30-504 (b) states that the “*receiver site shall be less environmentally sensitive than the sender site...*” Individual properties are classified from the most environmentally sensitive (Class I) to the least

environmentally sensitive (Class III). Transfers between Class I Habitats are prohibited. In addition, transfers from Class II or III parcels to Class I parcels and from Class III parcels to Class II parcels are also prohibited.

As noted previously, there are multiple comprehensive plan goals, objectives and policies that speak to the need to both protect and restore the region's environmental resources. Despite these efforts, analysis of a variety of environmental trends reveals significant losses to habitat. Declines in habitat also place additional pressure on the region's threatened and endangered species. The loss of seagrass and the resulting plight of the State's manatee population is a painful example of this dynamic.

It is recommended that the habitat restrictions contained within the TDR Ordinance be strengthened to address the ongoing failure of the program to advance the goals, objectives, and policies of the comprehensive plan. This should include, the establishment of re-vegetation plans for all Sender Sites along with improved protection of existing vegetation on all Receiver Sites.

Future policy should be guided by the need to increase the amount of both tropical hardwood hammock and mangrove vegetative communities. Consideration should be given to the establishment of numeric based goals for habitat restoration in order to begin to reverse some of the habitat loss that has occurred to date. Any additional flexibility with existing habitat restrictions contained within the TDR Ordinance should be tied to a measurable improvement in the protection of the region's remaining habitat.

(4) TDR Bank. Most TDR Ordinances establish at their inception a TDR or development rights bank. A TDR bank can help to both track and facilitate the transfer of development rights. Accurate tracking of development rights through a TDR bank would also help to eliminate confusion and potential malfeasance in connection with the transfer of development rights.

The Village should take steps to establish a development rights landbank or TDR Bank to both track and facilitate the transfer of development rights. The establishment of a TDR Bank should include an amnesty period for individuals to register any existing development rights that currently exist but have not been landed on a Receiver Site to date.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully requests the Local Planning Agency provide comments regarding potential amendments to the TDR Ordinance.

Attachments: None



Local Planning Agency Communication

To: Local Planning Agency Chair and Agency Members
From: Daniel J. Gulizio, Director of Development Services
Date: March 13, 2023
Subject: Chapter 30, Article IV, Division 11 - Building Permit Allocation System (BPAS)

Background:

The Village Building Permit Allocation System (BPAS) was commenced in 2002. At that time, a total of 302 allocations were provided over the twenty-year lifetime of the program with 171 market rate allocations and 131 affordable allocations. In 2004, the State increased the total number of allocations to 565 with 290 market rate allocations (51%) and 275 affordable allocations (49%). Subsequently, in 2007, the Village increased the total number of market rate allocations to 402 (71%), while decreasing the total number of affordable allocations to 163 (29%). The total number of combined market rate and affordable allocations remained the same (565).

At present, there are 11 market rate allocations and seven (7) affordable allocations yet to be issued. In addition, there is approximately 33,964 square feet of non-residential square footage yet to be allocated, along with 29 Administrative Relief Credits. Finally, the State Legislature is in the process of drafting legislation that would increase the supply of affordable housing allocations, though the ultimate resolution of the previously issued 300 affordable housing allocations will likely be delayed by litigation.

Analysis:

With the impending sunset of the current BPAS, two questions will become increasingly urgent. The first is establishing an approach to the disposition of any remaining Administrative Relief Credits and the second is the development of standards for the disposition of any future affordable housing allocations.

Presently, the issuance of Administrative Relief Credits is reserved for Administrative Relief. Pursuant to Sec. 30-477 – Administrative Relief,

(a) *Eligibility.* An applicant is eligible for administrative relief under the provisions of this section

if all the following criteria are met:

- (1) The applicant has complied with all requirements of the building permit allocation system;
- (2) The subject application has not been withdrawn;
- (3) The subject application has been considered in at least four consecutive annual allocation periods and has failed to receive an allocation award;
- (4) The applicant for the subject application has not been granted an allocation award deferral pursuant to Code [section 30-475\(m\)](#); and
- (5) The granting of administrative relief in the form of the issuance of a building permit shall be prohibited for lands within the Florida Forever targeted acquisition area unless, after 60 days from receipt of a complete application for administrative relief, it has been determined that the parcel cannot be purchased for conservation purposes by any county, state or federal agency or any private entity. The village shall routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least six months prior to the deadline for administrative relief.

In addition, pursuant to 30-477 (f) Action by Village Council. At the conclusion of the public hearing (on an application for Administrative Relief), the Village Council may take any or a combination of the following actions:

- (1) Grant the applicant an allocation award for all or part of the allocation requested in the next succeeding allocation period or extended pro rata over several succeeding allocation periods.
- (2) Offer to purchase the property at its fair market value.
- (3) Suggest such other relief as may be necessary and appropriate.

To date, the exclusive remedy that has been authorized by the Village Council has involved the awarding of an allocation. The third option involving the suggestion of “such other relief as may be necessary and appropriate” has not been used to date.

Moving forward, the more critical issue from a timing standpoint involve the disposition of the remaining Administrative Relief Credits. While there have been calls to use these credits to compensate both applications that involve lot donations, it would be more equitable to assign these credits in accordance with existing BPAS standards, including the need to be “considered in at least four consecutive annual allocation periods.”

During this waiting period, the Village Council could also take steps to prioritize the number of Administrative Relief Credits issued to those applications involving a lot donation consistent with Sec. 30-476 (d)(1)(b), which authorizes a maximum of six (6) allocations with lot donations on an annual basis.

Budget Impact:

None.

Staff Impact:

None.

Recommendation:

Staff respectfully requests that the Local Planning Agency provide direction regarding potential amendments to the BPAS.

Attachments: None