



## Council Communication

**To:** Mayor and Village Council

**Through:** Edward Koconis, AICP, Village Manager

**From:** Jay Berenzweig, Planner

**Date:** July 12, 2012

**SUBJECT: PROPOSED AMENDMENT TO TEMPORARY USES AND PUBLIC ASSEMBLIES REGULATIONS**

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### **Background:**

The Village Council approved an ordinance regarding public assembly permits in October, 1999. The ordinance required permits for gatherings that anticipate daily attendance to exceed 1,000 persons a day or where the amount of on-site parking is anticipated to be exceeded. At the time of the ordinance's adoption, this was commonly known as "the fish fry ordinance."

In January of 2002, the Village Council approved an Ordinance (Ord. No. 02-09) regarding temporary uses. This ordinance regulates temporary uses of all sizes with certain requirements differing dependent on the anticipated number of attendees to the event.

In January of 2008, the Village Council approved an Ordinance (Ord. No. 08-01) that amended temporary use regulations and included all public assemblies (with the exception of those occurring in Village Parks), repealed the "fish fry ordinance" and addressed public assemblies occurring in Village Parks through separate Village policies. The Temporary Use and Public Assemblies regulations are located in Chapter 30, Article V, Division 8 of the Village Code of Ordinances (the "Code").

Coordination between multiple Village departments, applicants and adjacent property owners is necessary to facilitate events in a safe and properly planned manner. An amendment to the Temporary Uses and Public Assemblies Ordinance (the "Proposed Amendment") would provide sufficient time to review and process applications, allow coordination between Village departments, applicants and adjacent property owners and alleviate unnecessary burdens on businesses within non-residential zoned properties. The Proposed Amendment would also ensure that temporary use permits would have to be applied for events occurring on properties in residential zoning districts exceeding 100 people.

### **Analysis:**

The Proposed Amendment was tabled during first reading at a regular scheduled Village Council Meeting on May 24, 2012 (the "Council Meeting"). Issues discussed on the Proposed

Amendment in the Council Meeting included the application submittal timeframe related to events such as funerals or celebrations of life. In order to address unique circumstances where the timeframe for application submittal may not be met, the Proposed Amendment reserves the Village Manager the ability to waive the application submittal timeline for unique circumstances such as funeral services or emergency related cleanup activities.

Another issued discussed in the Council Meeting was the correct number of expected attendees to trigger a temporary use permit application. Staff revised the Proposed Amendment to eliminate the need to obtain a temporary use permit for events (in any zoning district) where 100 people or less is the expected attendance. Staff also revised the permit application procedure to provide separate permit requirements for residential and nonresidential zoned properties. Definitions for *residential zoning district* and *nonresidential zoning district* were added to the Proposed Amendment that identifies each zoning district in the Village as either residential or nonresidential. In nonresidential zoning districts, a temporary use permit would be required for events anticipated to draw 250 or more people at any given time and approved by the Village Manager. In residential zoning districts, a temporary use permit would have to be issued for events anticipated to draw 100 or more people at any given time and approved by the Director of Planning and Development Services. If the temporary use would involve temporary closure of rights-of-way in any zoning district, it would have to be approved by the Village Manager.

The Proposed Amendment was revised after the Council Meeting under the definition of temporary use to include events and gatherings located within Village owned parks with the exception of Founder's Park. Events and gatherings located within Founder's Park are governed by rules and regulations of the Parks and Recreation Department.

The permit application procedures in the Proposed Amendment would require applications submitted no less than 30 days and up to 60 days prior to the incipience of the event dependent on the anticipated number of attendees and/or involvement of temporary closure of rights-of-way. The Proposed Amendment would eliminate the requirement of a public hearing for all events anticipated to draw over 1,000 people. The Proposed Amendment would still reserve that the Director of Planning and Development Services may require a temporary use application be subject to Village Council approval.

The Local Planning Agency recommended approval to Village Council through a 4-1 vote at a regular scheduled meeting on May 14, 2012.

**Budget Impact:**

The Proposed Amendment is not anticipated to impact the budget substantially at this time because a change in fees is not being proposed. The effect of the amended temporary use application deadlines on staff time and related compensation costs would be regularly evaluated for future consideration of fee increases in the event increased costs are incurred.

**Staff Impact:**

The Proposed Amendment is expected to allow staff sufficient application review time, processing, planning and coordination between Village departments.

**Recommendation:**

It is recommended that the Village Council **PASS** the Proposed Ordinance on first reading, amending Temporary Uses and Public Assemblies.



**ORDINANCE NO. 12-**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE V “SCHEDULE OF DISTRICT USES AND DEVELOPMENT STANDARDS,” DIVISION 8 “TEMPORARY USES,” SECTION 30-884 “CRITERIA FOR TEMPORARY USES AND PUBLIC ASSEMBLIES” AND SECTION 30-885 “PERMIT” OF THE VILLAGE CODE OF ORDINANCES; 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 THE APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY**

**WHEREAS**, Islamorada, Village of Islands (the “Village”) has adopted a comprehensive set of Land Development Regulations (the “LDRs”) to implement the Village Comprehensive Plan (the “Comprehensive Plan”); and

**WHEREAS**, as a part of the LDRs, public events and special assemblies are regulated under Chapter 30, Article V, Division 8 “Temporary Uses” of the Islamorada, Village of Islands Code of Ordinances (the “Village Code”); and

**WHEREAS**, the Village desires to amend Chapter 30 “Land Development Regulations”, Article V “Schedule of District Use And Development Standards,” Division 8 “Temporary Uses” of the Village Code to modify the criteria for temporary uses and public assemblies as well as standards and procedures related to temporary use permits; and

**WHEREAS**, the Village finds that temporary use regulations serve to control and mitigate adverse impacts on the Village’s permanent uses; and

**WHEREAS**, the Village finds that regulations establishing more specific guidelines for temporary uses within the Village will aid in the governance of special assemblies and public events occurring within the Village, the protection of individual freedom to assemble, and the preservation of a peaceful and safe environment for public events, as well as further regulate and provide for appropriate uses and compatibility within Village neighborhoods; and

**WHEREAS**, the Local Planning Agency has reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes; and

**WHEREAS**, the provisions of this Ordinance are consistent with the Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern.

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

**Section 1.** Chapter 30 “Land Development Regulations,” Article V “Schedule of District Use and Development Standards,” Division 8 “Temporary Uses,” are hereby amended to read as follows:

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**DIVISION 8. TEMPORARY USES INCLUDING PUBLIC ASSEMBLIES**

**Section 30-881. Intent and purpose.**

It is the intent and purpose of this division to permit defined temporary uses within the village on a controlled, time-limited basis, while controlling any adverse impacts on the village’s permanent uses.

**Section 30-882. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nonresidential zoning district means property located within the following zoning districts: village center (VC), tourist commercial (TC), commercial fishing (CF), marine use (MR), highway commercial (HC), neighborhood commercial (NC), industrial (I), public and semi-public services (PS), conservation (C), recreation (R) and mariculture (M).

*Public assembly* means a gathering, whether indoor or outdoor, which is designed to be attended by members of the general public, with or without an admission charge.

Residential zoning district means property located within the following zoning districts: native residential (NR), residential estate (RE), residential single-family (R1) and (R1M), residential mobile home (RMH), residential duplex (R2), residential triplex (R3), residential fourplex (R4), multifamily (MF), mobile home park (MH) and settlers residential (SR).

*Temporary use* means those uses that are required for a defined period of time during the construction phase of permitted development or uses that are uniquely temporary or seasonal in nature, including but not limited to holiday tree and decoration sales, seasonal sales of farm produce, temporary emergency shelters, sidewalk sales, construction project offices, storage, or sales offices for the marketing of the property upon which or near where they are located, model homes, flea markets, arts and crafts bazaars, art shows, and seminar/educational events, whether for profit or otherwise. Events and gatherings located within ~~parks owned by the village~~ Founder's Park are governed by regulations available through the village clerk and are not governed by this division.

Regulations herein govern both temporary uses and public assemblies and the term “temporary use” used herein includes “public assembly.”

**Section 30-883. Temporary uses permitted in all zoning districts.**

If not already provided for as a permitted or conditional use by this chapter, a temporary use shall be a permitted use in any zoning district of the village provided it meets the criteria set forth in this division. This section shall not override or substitute for any other section of this chapter that requires another type of permit, certification or approval.

**Section 30-884. Criteria for temporary uses and public assemblies.**

A temporary use permit may be issued to the owner, tenant or legal occupant of any property located within the village. The director of planning and development services may permit a temporary use provided the proposed use meets the following criteria:

- (1) The temporary use must be compatible with the surrounding uses.
- (2) The temporary use shall not generate noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.
- (3) If the temporary use is to be held in a residential zoning district and is anticipated to draw 100 or more people at any given time, then it must be approved by the director of planning and development services. ~~These uses shall not be subject to section 30-885(e).~~
- (4) If the temporary use is to be held in a non-residential zoning district and is anticipated to draw ~~100~~ 250 or more people at any given time, then it must be approved by the village manager. ~~If the event is anticipated to draw over 1,000~~

~~people, then it must be approved by the village council and an application for a permit must be submitted no less than 30 days prior to the event.~~

- (5) Any temporary use involving the temporary closure of rights-of-way in any zoning district shall be approved by the village manager.
- (56) If the temporary use is an event, then it may be permitted for a period of time not to exceed three days. Other temporary uses shall propose a maximum time limit based on the minimum amount of time needed to conduct the permitted activity. Regardless of the expiration date on the temporary use permit, construction-related temporary uses shall be removed prior to issuance of the final certificate of occupancy or certificate of completion.
- (67) No more than two temporary use permits may be issued at any given time to the same applicant, unless approved by the village manager.
- (78) The same location on private property may not receive a temporary use permit more than three times within a calendar year, unless approved by the village manager.

**Section 30-885. Permit.**

(a) Applications for temporary 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. The procedures of section 30-212 shall be followed, except as provided herein ~~and that~~

~~a public hearing is required only for uses anticipated to draw over 1,000 people.~~

The completed application shall be submitted as follows:

(1) Temporary uses in residential zoning districts anticipated to draw ~~less than~~ 100 or more people at any given time shall submit an application no less than ~~five~~ 30 working days prior to the event.

(2) Temporary uses in non-residential zoning districts anticipated to draw ~~400~~ 250 or more people at any given time shall submit an application no less than ~~15~~ 45 calendar days prior to the event.

(3) Temporary uses anticipated to ~~draw over 1,000 people~~ involve temporary closure of rights-of-way shall submit an application no less than ~~30 calendar~~ 60 days prior to the event.

(4) The village manger reserves the ability to waive the application submittal timeline under unique circumstances including but not limited to funeral services and emergency related cleanup activities.

(b) The following information shall be required of all persons making application for a temporary use permit:

(1) Name and address of applicant.

(2) Name, address and written permission of the property owner if different than the applicant.

(3) Legal description of the property where the temporary use is to be conducted.

(4) Scaled sketch plan of the property where the temporary use is to be conducted, the location of the temporary use, and the surrounding areas which will be impacted by the temporary use, including without limitation, traffic patterns, parking and any pedestrian areas nearby.

(5) A short description of the nature and type of temporary use.

(6) Information on signage, parking, traffic circulation, fire prevention, insurance, security and police coverage, vendors, and health certificates, where applicable and if requested by the director of planning and development services. If off-site parking is to be used, then written permission from the owner of the property on which parking is proposed shall be included.

(7) The estimated number of persons expected to attend the use.

(8) If the event is anticipated to take place on village properties or rights-of-way, an indemnification and hold-harmless agreement shall be submitted as approved by the village attorney.

(89) Any additional information reasonably requested by the village manager or designee necessary to evaluate the impact on the community, infrastructure and citizens.

(c) In addition to the items required in subsection (b) of this section, the applicant shall provide an endorsement to his/her insurance policy reflecting the village as a named insured and reflecting insurance in amounts and type as determined by the village manager. For temporary uses that are anticipated to

draw ~~100~~250 or more people at any given time, the applicant ~~shall~~ may be required to submit the following application information: ~~(1) —~~ Aa bond or other security agreement, requiring and ensuring that the property be kept clean of all trash and debris, during and immediately after the temporary use; ~~and,~~

~~(2) — 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, then condominium association may be substituted for all property owners.~~

(d) Upon a determination that the criteria contained in this division have been met, the director of the planning and development services department shall provide the applicant and adjacent property owners no less than ~~five working~~ ten days' notice by certified U.S. mail, return receipt requested, of the village's intent to issue the permit. ~~Temporary uses anticipated to draw less than 100 people at any given time shall not be subject to this subsection. Notice under this Section may be waived by the village manager.~~

(e) In issuing a temporary use permit, the director of planning and development services may prescribe appropriate conditions and safeguards as are necessary to protect the public interest and ensure harmony with the intent and purpose of this chapter. If an applicant fails to meet such conditions, if the use becomes a nuisance, or if any provision of this Code is violated by the use, then the temporary use permit may be revoked by the village manager upon providing

the applicant with written notice of the revocation. If the use endangers the public health or safety then the village manager shall revoke the permit immediately. The applicant may appeal the revocation of the temporary use permit to the village council.

(f) No temporary use permit issued pursuant to this division shall be transferable, assignable, or otherwise alienable.

(g) No temporary use permit shall be required if the use is part of a construction or other project by, or on behalf of the village.

(h) A temporary use permit shall only be granted based on a written determination by the director of planning and development services that the proposed use meets all of the criteria set forth in this division, and all other applicable requirements contained in this chapter.

(i) The director may require that a temporary use application be subject to village council approval.

(j) A temporary use permit may be denied on the basis of a potential adverse impact on public health or safety or due to any potentially unreasonable burdensome or negative impact to the affected area.

**Section 2. 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 3. Inclusion in the Code.** It is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 4. Approval by the Florida Department of Economic Opportunity.** The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the Florida Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 5. Effective Date.** This Ordinance shall not be effective until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Ordinance herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this Ordinance shall not be effective until either sixty (60) days after its transmittal to DEO or until twenty-one (21) days following the publishing in the Florida Administrative Weekly of a final order approving the Ordinance by DEO, pursuant to Chapter 380.05, Florida Statutes; or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

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

Mayor Michael Reckwerdt \_\_\_\_\_  
Vice Mayor Ken Philipson \_\_\_\_\_  
Councilman Don Achenberg \_\_\_\_\_  
Councilman Ted Blackburn \_\_\_\_\_  
Councilman Dave Purdo \_\_\_\_\_

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_.

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

Mayor Michael Reckwerdt \_\_\_\_\_  
Vice Mayor Ken Philipson \_\_\_\_\_  
Councilman Don Achenberg \_\_\_\_\_  
Councilman Ted Blackburn \_\_\_\_\_  
Councilman Dave Purdo \_\_\_\_\_

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
MICHAEL RECKWERDT, MAYOR

ATTEST:

\_\_\_\_\_  
VILLAGE CLERK

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

\_\_\_\_\_  
VILLAGE ATTORNEY