



Council Communication

To: Mayor and Village Council

Through: Maria T. Aguilar, Village Manager

From: Cheryl Cioffari, AICP, LEED Green Associate, Director of Planning

Date: March 26, 2015

SUBJECT: PROPOSED ORDINANCE ESTABLISHING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS," ARTICLE IV "ADMINISTRATIVE PROCEDURES," DIVISION 6 "PERMIT AND DEVELOPMENT APPROVAL COST RECOVERY," SECTIONS 30-331 THROUGH 341 OF THE VILLAGE CODE OF ORDINANCES

Background:

Islamorada, Village of Islands, utilized a cost recovery system from 2001 through 2010 to collect payment for processing various types of development applications. The cost recovery system was repealed in 2010 pursuant to Ordinance 10-07. In the years since cost recovery was repealed, there have been numerous applications where the costs of review of the application has exceeded the flat fee. The proposed amendment would provide a flat fee for review of planning applications which would cover internal review (Planning Department, Legal Department, Fire Department, Building Department, Wastewater and Utilities Department, and Public Works Department). Any required additional reviews, including but not limited to, traffic review or stormwater management plan, and any and all required noticing costs would be borne by the applicant proposing the development.

Analysis:

The proposed flat fee of the application is intended to cover internal staff time devoted to a particular project. In addition to this flat fee, the applicant would provide a cost recovery deposit which is comparable with the anticipated cost recovery for payment of all additional external reviews and required noticing (mailings and newspaper advertisements).

The cost recovery procedure would add a minor amount of administrative time associated with development review approval as a staff member would be required to contact applicants when deposits run low. However, the proposed amendment will ensure that the true costs for services related to the review of applications for development approvals and permits is borne by the applicant deriving the benefit of the review, not the general public.

Additional Reviews and Required Noticing

The costs reflected for certified mail and newspaper advertisements are presented for consideration. The United States Postal Service sets the price of a one-ounce letter sent certified mail receipt. The cost of newspaper advertising is based on real costs of advertisements that the Village has published. The size of the advertisement is dependent upon the number of titles printed. The costs reflected in the section for *Traffic Review* and *Stormwater Review* was developed by averaging the real costs of consulting fees between 2010 and the present.

Certified mailings

Effective January 26, 2014 the cost to mail a one-ounce letter via certified return receipt increased from \$6.11 to \$6.48. This type of notice is required to ensure affected property owners are notified of pending applications with the return receipt serving as proof of notification.

Number of Mailings	Total Cost
4	\$25.92
6	\$38.88
10	\$64.80
20	\$129.60
50	\$324.00
100	\$648.00

The cost of mailings is impacted by the number of property owners within the area affected by the proposed development. For example, an alcoholic beverage use permit requires property owners within 500 feet to be notified whereas a site plan approval requires adjacent property owners to be notified.

Newspaper Advertising

The cost of advertising is dependent upon the size the advertisement and the table below provides a summary of costs:

Size of Advertisement	Total Cost
3.5" X 5"	\$147.00
3" X 7"	\$205.80
3" X 11"	\$323.40
3" X 15"	\$441.00
3" X 17"	\$499.80

The size of the advertisement is affected by the number of items scheduled for that specific public hearing. Grouping items together for advertising purposes helps to reduce the overall costs for each individual applicant. In cases where several proposals are advertised for the same meeting, staff will divide the cost of the advertisement among the number of items so that no one applicant is bearing the total cost.

Traffic Review

A traffic impact report (also known as a traffic study) is required for developments that trigger eleven (11) or more vehicular trips a day. Additionally, a thorough review of a proposed development requires review of the vehicular circulation system, both on-site and off-site, to ensure compliance with traffic engineering standards utilized by the Village.

The cost of the review is dependent upon the comprehensiveness and accuracy of the initial submittal. The cost of the review may increase as a developer modifies the proposed design to adequately address any identified concerns.

The table below provides an average cost of traffic review by review type:

Review Type	Average Cost of Review	Cost of Application¹
Site Plan	\$2,067.50	\$1,800.00 for residential \$3,900.00 for nonresidential
Major Conditional Use	\$16,969.79	\$5,220.00
Minor Conditional Use	\$4,309.50	\$3,510.00

Stormwater Review

Each proposed development is required to submit a stormwater management plan that is reviewed to ensure safe management and disposal of stormwater from developed areas, and to protect natural resources to minimize or eliminate potential adverse impacts to surface waters, shallow groundwater, and natural resource areas within the village.

The cost of the review is dependent upon the comprehensiveness and accuracy of the initial submittal. The cost of the review may increase as a developer modifies the proposed design to adequately address any identified concerns.

The table below provides an average cost of stormwater review by review type:

Review Type	Average Cost	Cost of Application¹
Site Plan	\$1,063.46	\$1,800.00 for residential \$3,900.00 for nonresidential
Major Conditional Use	\$1,512.99	\$5,220.00
Minor Conditional Use	\$842.80	\$3,510.00

In the case of all additional reviews and public hearing and noticing requirements, the applicant would be responsible for payment of the actual amount charged to the Village.

Budget Impact:

Staff anticipates a positive budget impact as the costs of additional external review and noticing requirements will be borne by the applicant proposing the development.

¹ These items shall incur an additional fee equal to 10% of the initial fee for each (re)submittal beginning on the third submittal [which follows the second notice of deficiencies].

Staff Impact:

Staff impact will include tracking and documenting additional reviews and public hearing and noticing requirements associated with each project. When the cost recovery deposit runs low, staff will be required to contact the Applicant to seek additional cost recovery deposit funds.

Recommendation:

It is recommended that the Village Council pass the proposed Ordinance on first reading.

ORDINANCE NO.

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, ESTABLISHING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE IV “ADMINISTRATIVE PROCEDURES,” DIVISION 6 “PERMIT AND DEVELOPMENT APPROVAL COST RECOVERY,” SECTIONS 30-331 THROUGH 30-341 OF THE VILLAGE CODE OF ORDINANCES, CREATING AN ADMINISTRATIVE COST RECOVERY PROGRAM TO DEFRAY THE COSTS OF SERVICES RELATING TO REVIEW OF APPLICATIONS FOR PERMITS AND DEVELOPMENT APPROVALS BY VILLAGE STAFF AND CONSULTANTS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY

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

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village Council”) wishes to provide Village residents and businesses with the best possible services in the most cost-effective manner; and

WHEREAS, the Village Council finds that it is in the best interests of the Village to charge the true costs for services relating to the review of applications for development approvals and permits within the Village directly upon those persons deriving the benefit of the review; and

WHEREAS, the Village Council wishes to establish an administrative cost recovery program set forth within the Village Code of Ordinances (the “Code”); and

WHEREAS, Chapter 30 “Land Development Regulations,” Division 2 “Development Review,” Section 30-212(d)(1) of the Code requires that a fee, as established from time to time by the Village Council to defray the actual cost of processing the application, accompany all applications for planning and development services; and

WHEREAS, the updated fee schedule for services prepared by the Director of Planning includes the estimated direct costs and reasonable indirect costs associated with the review and processing of planning and development approval applications, including, but not limited to, site plans, conditional uses, variances, map amendments, text amendments, administrative appeals, preparation of official documents and other related applications, processes and services; 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 Village Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern.

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

Section 1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

Section 2. **Permit and Development Approval Cost Recovery.** Chapter 30 “Land Development Regulations,” Article IV, “Administrative Procedures”, Division 6 “Permit and

Development Approval Cost Recovery,” Sections 30-331 through 30-339 of the Village Code of Ordinances is hereby established to read as follows:

Additional text is shown as underlined;	deleted text is shown as strikethrough
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DIVISION 6. PERMIT AND DEVELOPMENT APPROVAL COST RECOVERY

Sec. 30-331. *Intent and purpose.*

The intent and purpose of this division is to ensure that the various costs borne by the village, including its outside consultants, in reviewing and processing applications for development approvals and permits is directly borne by those persons deriving the benefit of the review, not the general public.

Sec. 30-332. *Cost recovery.*

Persons or entities that file any development applications or that file review requests for which cost recovery is applicable and which requires additional review shall pay a flat fee and an initial preliminary cost recovery deposit as established by the Village Council, and as may be amended from time to time. The flat fee shall be used for internal review of the development application or review request. The cost recovery deposit shall be credited toward the charges for additional review and public hearing and notice requirements as set forth within this division. The person or entities that file any development application or review requests shall pay additional deposits where the costs of such review and/or processing exceeds the cost recovery deposit previously submitted hereunder. Payment of the flat fee and/or cost recovery deposit shall be made, prior to or at the time the application is filed or that the review request is made.

The amount of the cost recovery deposit for the different types of applications or review requests shall be commensurate with the anticipated cost recovery, and shall be established, and may be amended from time to time, by the village council.

The types of applications for development approval or permits that are subject to the provisions of this division include, but are not limited to, alcoholic beverage permit applications, appeal applications, beneficial use applications, building permit allocation system applications, boundary determinations, comprehensive plan map amendments, development agreements, preliminary plats, final plats, habitat evaluation indices, home occupation applications, land development regulation amendments, lot line adjustments, major conditional uses, minor conditional uses, modifications to a conditional use, official zoning map amendments, pre-application conferences, road abandonment applications, sign variances, transfers of development rights, vacation rental determinations, variances, and vested rights determinations.

(a) *Cost for review of revisions.* Cost for additional review by Village staff shall be charged to the applicant and based on revisions to plans. The amount charged for additional review which results from the submittal of revised plans shall be calculated in the following manner:

1. Submittal of the first revised plan shall be processed by planning and development services department at no additional cost to the applicant.
2. Submittal of the second revised plan shall be processed by the planning and development services department at no additional cost to the applicant.
3. Submittal of the third revision and each revision thereafter shall be processed at an additional charge of ten (10%) of the flat fee and shall be paid in total at the time of submittal.
4. Other costs shall be applicable as provided by subsections (b) and (c) below.

(b) Additional review. Cost for any and all outside contractors, agents or consultants used by the Village in reviewing development applications shall be charged to the applicant in an amount equal to the actual amount charged to the Village. The term "additional review", as used herein above, includes all review services provided in circumstances in which the Village utilizes the services of an outside contractor, agent or consultant for the application.

(c) Public hearing and notice requirements. When the provisions of this chapter require that mailed notice and/or require notice to be published, the applicant shall be responsible for payment of the cost thereof.

Sec. 30-333. Flat Fee and Initial Preliminary Deposit Required.

Any person or entity that files any application for a development approval or permit which necessitates village staff or additional review and processing shall pay, prior to or at the time the application is made, a flat fee which shall be used to cover the costs of review completed by village staff. Additionally, any person or entities that files any application for a development approval or permit which necessitates additional review and processing, and/or public hearing and notice requirements as set forth within Article IV, Division 2 of this chapter, shall pay a cost recovery deposit which shall be credited toward the fee charged for such additional review and processing, and shall pay additional deposits as may be required from time to time. A debit based upon the actual time expended reviewing an application and the applicable actual amount charged to the Village shall be charged against the cost recovery deposit.

Sec. 30-334. Supplemental Deposit.

The village shall monitor the cost recovery deposit on a periodic basis. Whenever the balance is zero or negative, a supplemental cost recovery deposit shall be required. The village shall notify the applicant when a supplemental deposit is required. The amount of the supplemental deposit shall be determined by the village manager or designee, and shall be equal to the costs estimated to complete review of the application. The village shall not issue any development approval or permit until the required supplemental cost recovery deposit has been deposited with the village.

Sec. 30-335. Return of Deposit.

Within ninety (90) days from the date that the applicant receives a certificate of occupancy or other applicable final approval from the village, and the planning and development services department determines that no further action is necessary for the review and processing of the application or the applicant voluntarily withdraws the application, the village shall refund any

remaining cost recovery deposit funds to the applicant. In no event, however, shall the village refund any remaining cost recovery deposit funds if the applicant fails to obtain a development approval or permit within one calendar year of applying for the approval or permit. In no event shall the Village refund the payment of the established flat fee.

Sec. 30-336. *Records of work performed.*

The village shall maintain records of the time expended and tasks conducted regarding each application.

Sec. 30-337. *Review and appeal process.*

(a) In the event an applicant is financially unable to pay the cost recovery deposit, or believes the village overcharged the applicant for the work performed in reviewing and processing an application, the applicant may:

(1) Request that the village council waive the cost recovery deposit on the basis of a bona fide financial hardship; or

(2) Request a review by the village manager or designee of the work performed by the village.

(b) Upon a determination by the village council that the applicant has demonstrated a bona fide financial hardship, or upon a determination by the village manager or designee that a miscalculation concerning the work performed by the village on the application, the village manager or designee may waive or refund a portion or all of the cost recovery deposit.

Sec. 30-338. *Exemption for projects initiated by or on behalf of village.*

This cost recovery program shall not apply to development projects that are originally initiated by or on behalf of the village.

Sec. 30-339. *Exemption for development and/or redevelopment of affordable housing.*

This cost recovery program shall not apply to development projects for the development and/or redevelopment of affordable housing which are deed restricted for ninety-nine (99) years or more or in perpetuity. Notwithstanding the foregoing, the applicants or entities that file an application for the development and/or redevelopment of affordable housing shall pay the cost of professional review and public hearing notice requirements as set forth in Code Sections 30-332(b) and (c). Notwithstanding the foregoing, all applicable fees shall not be waived for all development approvals for applications for variances to setback, landscaping and / or off-street parking requirements associated with the development and/or redevelopment of affordable housing.

Sec. 30-340. *Building permit fee schedule not affected.*

The schedule of building permit and related fees established by resolution of the Village Council as authorized in Chapter 6, *Buildings and Building Regulation*, of this Code are separate from the cost recovery fees and deposits authorized by this division.

Sec. 30-341. Replacement of conflicting fee programs.

The cost recovery program set forth in this division shall replace any conflicting or inconsistent fee program or schedule within the village.

Section 3. Repeal of Conflicting Provisions. The provisions of the Village Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

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

Section 7. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, 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 Mike Forster _____
Vice Mayor Deb Gillis _____
Councilman Jim Mooney _____
Councilman Chris Sante _____
Councilman Dennis Ward _____

PASSED on first reading this _____ day of _____, 2015.

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 Mike Forster _____
Vice Mayor Deb Gillis _____
Councilman Jim Mooney _____
Councilman Chris Sante _____
Councilman Dennis Ward _____

PASSED AND ADOPTED on second reading this _day of _____, 2015.

MIKE FORSTER, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

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

ROGET V. BRYAN, VILLAGE ATTORNEY