

VILLAGE OF ESTERO, FLORIDA

VILLAGE COUNCIL MEETING MARCH 27, 2015

REQUEST FOR VILLAGE COUNCIL CONSIDERATION

Agenda Item: 4. (D)	Prepared By: Chief Scott Vanderbrook
Agenda Section: Council Business	
Subject: Resolution Regarding Fire Control and Prevention Interlocal Agreement Between Estero Fire and Rescue District and the Village of Estero	

BACKGROUND:

In order to continue fire control and prevention services for the Village of Estero, the Village should enter into an Interlocal Agreement with the Estero Fire and Rescue District.

FUNDING SOURCE / FISCAL IMPACT:

N/A

RECOMMENDATION:

Approve Resolution Approving the Fire Control and Prevention Interlocal Agreement.

POTENTIAL MOTION:

I make a motion to approve the Resolution Approving the Fire Control and Prevention Interlocal Agreement.

**FIRE CONTROL AND PREVENTION
INTERLOCAL AGREEMENT**

DRAFT

THIS INTERLOCAL AGREEMENT is made and entered into effective this ____ day of _____, 2015, by and between the ESTERO FIRE RESCUE DISTRICT, an independent special fire control district created by the Florida Legislature, with its principal office located at 21500 Three Oaks Parkway, Estero, Florida 33928 (referred to herein as the "DISTRICT"); and the VILLAGE OF ESTERO, with its principal place of business to be determined (referred to herein as the "VILLAGE").

WITNESSETH:

WHEREAS, the Florida Interlocal Cooperation Act of 1969, codified as Section 163.01, Florida Statutes, authorizes the joint exercise of any power, privilege or authority which local governmental units might exercise separately; and,

WHEREAS, the VILLAGE and the DISTRICT are public agencies and local governmental units within the meaning of the Florida Interlocal Cooperation Act and desire the joint exercise of power which each might exercise separately to the extent described herein, for the purpose of enforcing the Florida Fire Prevention Code, Chapter 633, Florida Statutes and local ordinances relating to firesafety and fire control (collectively referred to herein as the "FIRE CODE"); and,

WHEREAS, the VILLAGE does not employ a Fire Chief, Fire Marshal or Firesafety Inspector, and contracts out to Lee County for land use and building official services;

NOW, THEREFORE, in consideration of the mutual promises, covenants and duties hereinafter set forth, the VILLAGE and the DISTRICT formally covenant, agree and bind themselves as follows:

1. The VILLAGE and the DISTRICT acknowledge and agree that the fire prevention, firesafety and fire control duties within the territory of the DISTRICT and located within the boundaries of the VILLAGE are the responsibility of the DISTRICT.
2. The VILLAGE and the DISTRICT agree that the Fire Chief of the DISTRICT shall act as the Fire Official for the VILLAGE, and shall meet or exceed the following qualifications:
 - a. Shall have a high school diploma or equivalency certificate, shall be certified by the State of Florida as a firefighter and shall be certified by the State of Florida as a fire inspector. In lieu of such certifications, any combination of experience or training which has resulted in equivalent knowledge, skills and abilities may be accepted.

- b. Shall be appointed by and certified as qualified by the DISTRICT's governing body, and notice of the certification shall be filed with the City Clerk, with a copy to the City Manager.
3. The VILLAGE and the DISTRICT agree that the Fire Marshal of the DISTRICT shall act as the Firesafety Inspector for the VILLAGE, as described in Section 633.081, Florida Statutes, and shall meet or exceed the statutory requirements of that Section, as set out in Exhibit A, attached hereto and incorporated herein.
4. The Fire Marshal shall be either the Fire Chief of the DISTRICT, or the Fire Marshal of the DISTRICT or another qualified person appointed by and certified as qualified by the DISTRICT's Fire Chief. Notice of the certification shall be filed with the City Clerk, with a copy to the City Manager.
5. The VILLAGE and the DISTRICT agree that all of the duties of the Fire Official or of a Fire Marshal or Firesafety Inspector may be exercised by any deputy, assistant, or designee who meets the qualifications for the respective function and has been so designated by the Fire Chief.
6. The Fire Chief, as Fire Official, the Fire Marshal as Firesafety Inspector and their deputies, assistants or designees set forth in the list attached as Exhibit B and incorporated herein, are hereby appointed as Code Inspectors/Code Enforcement Officers for the VILLAGE within the meaning of Chapter 162, 166, 553 and 633, Florida Statutes, and the VILLAGE charter and ordinances. To the extent of their area of applicability and expertise, they may enforce state and local Fire Codes. This list may be revised upon notification by the Fire Chief to the City Clerk with a copy to the City Manager.
7. The DISTRICT agrees to provide assistance to the VILLAGE to properly interpret and enforce the Florida Fire Prevention Code, the Florida Building Code to the extent it relates to firesafety inspection and fire prevention, and any ordinances and duly enacted policies and regulations of the VILLAGE relating to firesafety, fire inspection and fire control.
8. The VILLAGE and the DISTRICT will coordinate their efforts to provide for a smooth, efficient and timely process for receiving and review of applications and plans for review, for inspections, and for permit issuance. A sample of the current permitting process is set out in Exhibit C, attached hereto and incorporated herein. The City Manager and the Fire Chief, or their designees, will be responsible for further coordinating the permitting process and may make changes by mutual written agreement or memorandum as necessary.
9. The VILLAGE will provide civil enforcement services to the DISTRICT under any of the following:

- a. The VILLAGE's code enforcement ordinances and corresponding state law,
 - b. The VILLAGE's nuisance abatement procedures,
 - c. Any other civil enforcement method permitted by law.
10. If a fine is paid to the VILLAGE, the VILLAGE may retain its costs plus ½ of the collected fine amount, with the remainder going to the DISTRICT. If an enforcement procedure involves extraordinary costs or complicated issues or processes, the VILLAGE and the DISTRICT will negotiate in good faith a fair process for handling the matter, which may provide for services by the VILLAGE or by the DISTRICT.
 11. The VILLAGE and the DISTRICT agree that all disputes between the DISTRICT Fire Official or Firesafety Inspector and the VILLAGE's Building Official, or between an aggrieved party and/or the Firesafety Official or Firesafety Inspector and the VILLAGE Building Official shall be resolved, if at all possible, by the respective officials; failing that, it shall be submitted to the Lee County Board of Adjustments and Appeals, if it consents to assume jurisdiction.
 12. It is anticipated that if any legislation is required to implement any provision of this agreement, the VILLAGE and the DISTRICT will cooperate to provide accurate data and recommendations for the assistance of the other. Nothing in the Agreement shall be interpreted to require or encourage either party to bargain away its own sovereignty.
 13. This Agreement shall terminate 5 years from the effective date. It may be renewed for an additional 5 year period by mutual consent of the parties.
 14. This Agreement shall become effective upon the Effective Date of Adoption and last execution by the authorized representatives of both the VILLAGE and the DISTRICT.

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ATTEST:

VILLAGE OF ESTERO

By: _____

By: _____

Date signed: _____

APPROVED AS TO FORM:

Village Attorney

ATTEST:

ESTERO FIRE RESCUE DISTRICT

By: _____
James Mendolera, Secretary/Treasurer

By: _____
Richard G. Schweers, Chair

Date signed: _____

APPROVED AS TO FORM:

District Attorney

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“EXHIBIT A”

QUALIFICATIONS

633.081, Florida Statutes (2013)

....

...

(2) Except as provided in s. 633.082(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall:

- (a) Be a high school graduate or the equivalent as determined by the department;
- (b) Not have been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States, or of any state thereof, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;
- (c) Have her or his fingerprints on file with the department or with an agency designated by the department;

(d) Have good moral character as determined by the department;

(e) Be at least 18 years of age;

(f) Have satisfactorily completed the firesafety inspector certification examination as prescribed by the department; and

(g)1. Have satisfactorily completed, as determined by the department, a firesafety inspector training program of not less than 200 hours established by the department and administered by agencies and institutions approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received in another state training which is determined by the department to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

(3)(a)1. Effective July 1, 2013, the classification of special state firesafety inspector is abolished, and all special state firesafety inspector certifications shall expire at midnight June 30, 2013.

2. Any person who is a special state firesafety inspector on June 30, 2013, and who has failed to comply with paragraph (b) or paragraph (c) may not perform any firesafety inspection required by law.

3. A special state firesafety inspector certificate may not be issued after June 30, 2011.

(b)1. Any person who is a special state firesafety inspector on July 1, 2011, and who has at least 5 years of experience as a special state firesafety inspector as of July 1, 2011, may take the firesafety inspection examination as provided in paragraph (2)(f) for firesafety inspectors before July 1, 2013 to be certified as a firesafety inspector under this section.

2. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

3. A person who fails to become certified must comply with paragraph (c) to be certified as a firesafety inspector under this section.

(c)1. To be certified as a firesafety inspector under this section, any person who:

a. Is a special state firesafety inspector on July 1, 2011, and who does not have 5 years of experience as a special state firesafety inspector as of July 1, 2011; or

b. Has 5 years of experience as a special state firesafety inspector but has failed the examination taken as provided in paragraph (2)(f), must take an additional 80 hours of the courses described in paragraph (2)(g).

2. After successfully completing the courses described in this paragraph, such person may take the firesafety inspection examination as provided in paragraph (2)(f), if such examination is taken before July 1, 2013.

3. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

4. A person who fails the course of study or the examination described in this paragraph may not perform any firesafety inspection required by law on or after July 1, 2013.

(4) A firefighter certified pursuant to s. 633.35 may conduct firesafety inspections, under the supervision of a certified firesafety inspector, while on duty as a member of a fire department company conducting inservice firesafety inspections without being certified as a firesafety inspector, if such firefighter has satisfactorily completed an inservice fire department company inspector training program of at least 24 hours' duration as provided by rule of the department.

(5) Every firesafety inspector certificate is valid for a period of 3 years from the date of issuance. Renewal of certification is subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter, which shall include completion of at least 40 hours during the preceding 3-year period of continuing education as required by the rule of the department or, in lieu thereof, successful passage of an examination as established by the department.

(6) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector if the State Fire Marshal finds that any of the following grounds exist:

(a) Any cause for which issuance of a certificate could have been refused had it then existed and been known to the State Fire Marshal.

(b) Violation of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of records relating to the certificate.

(d) Having been found guilty of or having pleaded guilty or nolo contendere to a felony, whether or not a judgment of conviction has been entered.

(e) Failure to meet any of the renewal requirements.

(f) Having been convicted of a crime in any jurisdiction which directly relates to the practice of fire code inspection, plan review, or administration.

(g) Making or filing a report or record that the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(h) Failing to properly enforce applicable fire codes or permit requirements within this state which the certificateholder knows are applicable by committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.

(i) Accepting labor, services, or materials at no charge or at a noncompetitive rate from any person who performs work that is under the enforcement authority of the certificateholder and who is not an immediate family member of the certificateholder. For the purpose of this paragraph, the term "immediate family member" means a spouse, child, parent, sibling,

grandparent, aunt, uncle, or first cousin of the person or the person's spouse or any person who resides in the primary residence of the certificateholder.

(7) The Division of State Fire Marshal and the Florida Building Code Administrators and Inspectors Board, established pursuant to s. 468.605, shall enter into reciprocity agreement to facilitate joint recognition of continuing education recertification hours for certificateholders licensed under s. 468.609 and firesafety inspectors certified under subsection (2).

(8) The State Fire Marshal shall develop by rule an advanced training and certification program for firesafety inspectors having fire code management responsibilities. The program must be consistent with the appropriate provisions of NFPA 1037, or similar standards adopted by the division, and establish minimum training, education, and experience levels for firesafety inspectors having fire code management responsibilities.

(9) The department shall provide by rule for the certification of firesafety inspectors.

"EXHIBIT B"

LIST OF FIRE DISTRICT OFFICIALS AND EMPLOYEES DESIGNATED
AS CITY CODE INSPECTORS/CODE ENFORCEMENT OFFICERS

NAME

TITLE

- | | |
|----------------------|------------------------------------|
| 1. Scott Vanderbrook | Fire Chief/Fire Official |
| 2. Mark Wahlig | Assistant Fire Chief/Fire Official |
| 3. Phillip Green | Fire Marshal/Firesafety Inspector |
| 4. Johnny Manning | Fire Inspector |
| 5. Scott Danielson | Fire Inspector |

“EXHIBIT C”

INSPECTION PROCEDURES

(Subject to Amendment by Agreement of the City Manager and the Fire Chief)

The DISTRICT hereby will review with respect to the Florida Fire Prevention Code, Florida Building Code as it relates to firesafety and fire prevention, and the VILLAGE Building Code as they relate to firesafety and fire prevention, the following: All development site plans, DCI cases and building plans submitted for building permits (excluding one and two-family dwellings) in the manner described below.

A. Development Site plans, DCI Cases, Subdivision Plats

Upon receipt of applications for DCIs and requests for subdivision approval, the VILLAGE staff and DCI review will take place. A copy of the site plan and staff consents shall be sent to the District where the development is located in the VILLAGE. The District may submit written comments in respect to the development to the DCI Coordinator located within the Division of Community Development. The comments of the VILLAGE staff and the District will be submitted to the Zoning Board at the zoning hearing. The District may appear at the Zoning Board hearing and the Zoning Appeals Board hearing.

B. Building Permits and Certificates of Occupancy – Simultaneous Plan Review

Upon receipt of an application and building plan for a building permit, the staff review will take place, including review by the VILLAGE Building Official and DISTRICT Fire Official, and/or their respective designees with regard to the application Building Codes and Florida Fire Prevention Code. A copy of the plan will be picked up by the DISTRICT within one (1) working day of the VILLAGE receiving the application. The DISTRICT shall complete its review within five (5) working days of receipt of application and building plan. Should the review require additional time due to the size of the project, a reasonable extension of time may be granted by the VILLAGE Building Official upon request of the DISTRICT Fire Official. If the DISTRICT disputes that the plan complies with the applicable Fire Code or there is a question as to interpretation of the Fire Code, the procedures set out in Paragraph 11 of the VILLAGE/DISTRICT Interlocal Agreement shall go into effect. A copy of amendments to building plans shall be sent to the DISTRICT. The DISTRICT shall not approve amendments to approved plans unless said plans have been processed through the VILLAGE review in the same manner as the original plans. Permits and certificates will be issued only upon review and approval of the respective parties.

C. Final Inspection—

Prior to issuance of a Certificate of Occupancy, a final inspection shall be conducted by the DISTRICT. The inspection shall be conducted by the DISTRICT within 2 working days of the receipt of the application for Certificate of Occupancy forwarded by the VILLAGE. The Certificate of Occupancy shall not be issued until a final decision is rendered that the project is in

compliance with the applicable fire code or other code as it relates to firesafety or fire control. If, in the determination of the Fire Official, no immediate life safety hazard exists, a Conditional Certificate of Occupancy may be issued.

VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 15 - ____

A RESOLUTION APPROVING THE FIRE CONTROL AND PREVENTION INTERLOCAL AGREEMENT BETWEEN THE ESTERO FIRE DISTRICT AND THE VILLAGE OF ESTERO REGARDING FIRE CONTROL AND PREVENTION SERVICES FOR THE VILLAGE OF ESTERO; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

SECTION ONE. The Fire Control and Prevention Interlocal Agreement between the Estero Fire Rescue District and the Village of Estero regarding Fire Control and Prevention Services, a copy of which is attached hereto and incorporated herein by this reference, is approved; and

SECTION TWO. The Mayor is hereby authorized to execute the Interlocal Agreement between the Estero Fire Rescue District on behalf of the Village.

SECTION THREE. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this ____ day of March, 2015.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____

By: _____

Interim Village Clerk

Mayor

Reviewed for legal sufficiency:

By: _____

Interim Village Attorney