VILLAGE OF ESTERO, FLORIDA

VILLAGE COUNCIL MEETING
April 6, 2015

REQUEST FOR VILLAGE COUNCIL CONSIDERATION

Agenda Item: 4. (C)	Prepared By: Howard Levitan
Agenda Section: Council Business	
Subject: First Reading of Ordinance Establishing Procedures for Ex Parte Communication	

BACKGROUND:

Ordinance establishing procedures for Ex Parte Communication

FUNDING SOURCE / FISCAL IMPACT:

N/A

RECOMMENDATION:

Approve first reading of Ordinance 15-02 establishing procedures for Ex Parte Communication.

POTENTIAL MOTION:

I make a motion to approve the first reading of Ordinance 15-02 establishing procedures for Ex Parte Communication.

ORDINANCE NO. 2015- _____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ESTABLISHING PROCEDURES FOR EX PARTE COMMUNICATIONS RELATED TO QUASI-JUDICIAL PROCEEDINGS; PROVIDING A SEVERABILITY CLAUSE; REPEALING AND RESCINDING ALL ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4 3, 2014 and the Village Council was elected on March 3, 2015, pursuant to the Charter of the Village of Estero ("Charter") created by Ch. 2014-249, Laws of Florida; and

WHEREAS, the Charter provides that the Village Council shall have the broadest exercise of home rule powers permitted under the state Constitution and the laws of the state; and

WHEREAS, the Charter at Section 11, "General Provisions", paragraph (5) "Transitional Ordinances and Resolutions", provides that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to enact an ordinance providing for ex-parte procedures in quasi-judicial proceedings that are authorized by Section 286.0155(2), Florida Statutes, but which are in conflict with Lee County ex-parte procedures; and

WHEREAS, the Village Council intends that this Ordinance adopting the ex-parte quasi-judicial procedures shall replace the Lee County ex-parte quasi-judicial procedures upon adoption; and

WHEREAS, the Charter at Section 11, "General Provisions", paragraph (6) "Transitional Comprehensive Plan", provides that the Village Council is the Local Planning Agency for the Village until such time as the Village Council establishes a separate local planning agency; and

WHEREAS, the Village Council, as the Local Planning Agency, has determined that the ex-parte quasi-judicial procedures established by this Ordinance are consistent with the Comprehensive Plan.

NOW THEREFORE, THE VILLAGE OF ESTERO HEREBY ORDAINS as follows:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed as being true, and the same are hereby incorporated as a part of this Ordinance.

Section 2. **Communications with Local Public Officials.** Communications with local public officials (as defined in F.S. § 286.0115(2)) regarding quasi-judicial matters shall be governed by the following procedure:

(1) If any person not otherwise prohibited by statute, Charter provision, or ordinance discusses with any local public official representing the Village of Estero the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member, such communication shall not raise any presumption of prejudice, provided that the following process of disclosure occurs:

a. The subject and substance of any ex parte communication with a local public official representing the Village of Estero which relates to quasi-judicial action pending before

the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

b. A local public official representing the Village of Estero may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

c. A local public official representing the Village of Estero may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions are made a part of the record before final action is taken on the matter.

(2) Disclosure made pursuant to Section (1) a., b. and c. above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

Section 3. **Severability.** If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 4. **Conflict.** All sections or parts of sections of the applicable county ordinances currently in place at the time of the incorporation of the Village of Estero in conflict herewith are intended to be rescinded and repealed to the extent of such conflict.

Section 13. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____ , 2015.

PASSED and ADOPTED on second reading this ____ day of _____, 2015.

_____
Nick Batos, Mayor

Attest:

_____
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Burt Saunders, Interim Village Attorney

DRAFT

On First Reading Moved by: _____

On Second Reading Seconded by: _____

Vote:

Mayor Batos	yes_____	no_____
Vice Mayor Levitan	yes_____	no_____
Councilmember Boesch	yes_____	no_____
Councilmember Brown	yes_____	no_____
Councilmember Errington	yes_____	no_____
Councilmember Ribble	yes_____	no_____
Councilmember Wilson	yes_____	no_____