

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
November 28, 2018

Agenda Item:

Ordinance No. 2018-20 An Ordinance of the Village Council of the Village of Estero, Florida, Repealing Development District Provisions of the Lee County Code Previously Adopted by Reference; and Providing an Effective Date

Description:

First reading of Ordinance No. 2018-20 was held on October 3, 2018. At the October 17, 2018 second reading/hearing, concerns were raised that by removing such provisions from the Village Code, the existence of these CDDs may be in jeopardy, and the second reading/hearing was continued to November 28, 2018. Village Legal Counsel has worked to get consensus amongst the various legal counsels of area CDDs; however, it is recommended that the second reading/hearing of the ordinance be continued for one additional meeting while awaiting additional responses.

Action Requested:

Motion to continue second reading/hearing of Ordinance No. 2018-20 to the December 5, 2018 Council meeting to provide time for additional responses from legal counsels of area CDDs.

Financial Impacts:

None.

Attachments:

1. Ordinance No. 2018-20
1. Memorandum from Derek Rooney, Assistant Village Attorney

ATTACHMENT 1

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2018 - 20

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, REPEALING DEVELOPMENT DISTRICT PROVISIONS OF THE LEE COUNTY CODE PREVIOUSLY ADOPTED BY REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014; and

WHEREAS, the Charter of the Village of Estero (“Charter”) at Section 11, “General Provisions,” paragraph (5) “Transitional Ordinances and Resolutions,” provides that all applicable lawful Lee 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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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 rescind certain provisions of the Lee County Code that fall into one of the following categories: non-ordinance provisions, provisions preempted to counties, provisions specifically related to county departments, officers, agencies or areas outside of Estero, provisions that would apply within Estero without the Village’s adoption of same.

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

Section 1. Lee County Code Sections repealed.

The following sections were included in the Code of Laws and Ordinances, of the Village of Estero, Florida by virtue of their inclusion in the Lee County Code are hereby rescinded and repealed as ordinances of the Village of Estero:

Lee County Code Sec. 11¼-21. Authority for article; Sec. 11¼-22. Establishment of the River Ridge Community Development District; Sec. 11¼-23. Governance; Sec. 11¼-24. Ordinance No. 98-07 amendment; Secs. 11¼-25—11¼-30. Reserved; Sec. 11¼-31. Authority for article; Sec. 11¼-32. Establishment of the Bay Creek Community Development District; Sec. 11¼-33. Authorization for the exercise of optional powers; Sec. 11¼-34. District name; Sec. 11¼-35. Statutory provisions governing district; Sec. 11¼-41. District name; Sec. 11¼-42. Authority for article; Sec. 11¼-43. Establishment of community development district; Sec. 11¼-44. Statutory provisions governing district; Sec. 11¼-51.

46 District name; Sec. 11¼-52. Authority for article; Sec. 11¼-53. Establishment of community
47 development district; Sec. 11¼-54. Statutory provisions governing district; Sec. 11¼-55.
48 Authorization for exercise of optional powers; Sec. 11¼-61. District name; Sec. 11¼-62.
49 Authority for article; Sec. 11¼-63. Establishment of community development district; Sec.
50 11¼-64. Designation of initial board members; Sec. 11¼-65. Statutory provisions governing
51 district; Sec. 11¼-66. Authorization to modify boundaries; Sec. 11¼-71. District name and
52 legal description; Sec. 11¼-72. Authority for article; Sec. 11¼-73. Establishment of
53 community development district; Sec. 11¼-74. Designation of initial members of the board
54 of supervisors; Sec. 11¼-75. Initial powers of the community development district; Sec.
55 11¼-76. Statutory provisions governing the community development district; Sec. 11¼-77.
56 Additional conditions imposed on the community development district; Sec. 11¼-91. District
57 name; Sec. 11¼-92. Authority for ordinance; Sec. 11¼-93. Establishment of community
58 development district; Sec. 11¼-94. Designation of initial board members; Sec. 11¼-95.
59 Statutory provisions governing district; Sec. 11¼-96. Notice to subsequent property owners;
60 Sec. 11¼-97. Authorization for exercise of special powers; Sec. 11¼-111. District name and
61 legal description; Sec. 11¼-112. Authority for ordinance; Sec. 11¼-113. Establishment of
62 community development district; Sec. 11¼-114. Designation of initial members of the board
63 of supervisors; Sec. 11¼-115. Initial powers of the community development district; Sec.
64 11¼-116. Statutory provisions governing the community development district; Sec. 11¼-117.
65 Additional conditions imposed on the community development district; Sec. 11¼-121.
66 District name and legal description; Sec. 11¼-122. Authority for article; Sec. 11¼-123.
67 Establishment of community development district; Sec. 11¼-124. Designation of initial
68 members of the board of supervisors; Sec. 11¼-125. Initial powers of the community
69 development district; Sec. 11¼-126. Statutory provisions governing the community
70 development district; Sec. 11¼-127. Additional conditions imposed on the community
71 development district; Sec. 11¼-128. Authorization for exercise of optional (special) powers;
72 Sec. 11¼-129. Authorization to modify boundaries; Sec. 11¼-131. District name; Sec. 11¼-
73 132. Authority for article; Sec. 11¼-133. Establishment of community development district;
74 Sec. 11¼-134. Designation of initial board members; Sec. 11¼-135. Statutory provisions
75 governing district; Sec. 11¼-136. Notice to subsequent purchasers; Sec. 11¼-137.
76 Authorization for exercise of optional powers; Sec. 11¼-141. District name; Sec. 11¼-142.
77 Authority for article; Sec. 11¼-143. Establishment of community development district; Sec.
78 11¼-144. Designation of initial board members; Sec. 11¼-145. Statutory provisions
79 governing district; Sec. 11¼-146. Notice to subsequent purchasers; Sec. 11¼-151. District
80 name; Sec. 11¼-152. Authority for article; Sec. 11¼-153. Establishment of community
81 development district; Sec. 11¼-154. Designation of initial board members; Sec. 11¼-155.
82 Statutory provisions governing district; Sec. 11¼-156. Notice to subsequent purchasers; Sec.
83 11¼-171. District name; Sec. 11¼-172. Authority; Sec. 11¼-173. Establishment of
84 community development district; Sec. 11¼-174. Designation of initial board members; Sec.
85 11¼-175. Statutory provisions governing district; Sec. 11¼-176. Authorization for exercise
86 of special powers; Sec. 11¼-177. Notice to subsequent purchasers; Sec. 11¼-191. District
87 name and legal description; Sec. 11¼-192. Authority; Sec. 11¼-193. Establishment of
88 community development district; Sec. 11¼-194. Designation of initial members of the board
89 of supervisors; Sec. 11¼-195. Initial powers of the community development district; Sec.
90 11¼-196. Statutory provisions governing the community development district; Sec. 11¼-197.

91 Additional conditions imposed on the community development district; Sec. 11¼-201.
92 District name and legal description; Sec. 11¼-202. Authority for article; Sec. 11¼-203.
93 Establishment of community development district; Sec. 11¼-204. Designation of initial
94 members of the board of supervisors; Sec. 11¼-205. Initial powers of the community
95 development district; Sec. 11¼-206. Statutory provisions governing the community
96 development district; Sec. 11¼-207. Additional conditions imposed on the community
97 development district; Sec. 11¼-208. Authorization for exercise of optional (special) powers;
98 Sec. 11¼-211. District name and legal description; Sec. 11¼-212. Authority for article; Sec.
99 11¼-213. Establishment of community development district; Sec. 11¼-214. Designation of
100 initial members of the board of supervisors; Sec. 11¼-215. Initial powers of the community
101 development district; Sec. 11¼-216. Statutory provisions governing the community
102 development district; Sec. 11¼-217. Additional conditions imposed on the community
103 development district; Sec. 11¼-231. District name; Sec. 11¼-232. Authority for article; Sec.
104 11¼-233. Establishment of community development district; Sec. 11¼-234. Designation of
105 initial board members; Sec. 11¼-235. Statutory provisions governing district; Sec. 11¼-236.
106 Notice to subsequent purchasers; Sec. 11¼-251. District name; Sec. 11¼-252. Authority for
107 article; Sec. 11¼-253. Establishment of community development district; Sec. 11¼-254.
108 Designation of initial board members; Sec. 11¼-255. Statutory provisions governing district;
109 Sec. 11¼-256. Notice to subsequent purchasers; Sec. 11¼-261. District name; Sec. 11¼-262.
110 Authority for article; Sec. 11¼-263. Establishment of community development district; Sec.
111 11¼-264. Designation of initial board members; Sec. 11¼-265. Statutory provisions
112 governing district; Sec. 11¼-266. Notice to subsequent purchasers; Sec. 11¼-271. District
113 name; Sec. 11¼-272. Authority for article; Sec. 11¼-273. Establishment of community
114 development district; Sec. 11¼-274. Designation of initial board members; Sec. 11¼-275.
115 Statutory provisions governing district; Sec. 11¼-276. Notice to subsequent purchasers; Sec.
116 11¼-281. District name; Sec. 11¼-282. Authority for article; Sec. 11¼-283. Establishment of
117 community development district; Sec. 11¼-284. Designation of initial board members; Sec.
118 11¼-285. Statutory provisions governing district; Sec. 11¼-286. Notice to subsequent
119 purchasers; Sec. 11¼-291. District name; Sec. 11¼-292. Authority for article; Sec. 11¼-293.
120 Establishment of community development district; Sec. 11¼-294. Designation of initial
121 board members; Sec. 11¼-295. Statutory provisions governing district; Sec. 11¼-296. Notice
122 to subsequent purchasers; Sec. 11¼-301. District name; Sec. 11¼-302. Authority for article;
123 Sec. 11¼-303. Establishment of community development district; Sec. 11¼-304. Designation
124 of initial board members; Sec. 11¼-305. Statutory provisions governing district; Sec. 11¼-
125 306. Notice to subsequent purchasers; Sec. 11¼-311. District name; Sec. 11¼-312. Authority
126 for article; Sec. 11¼-313. Establishment of community development district; Sec. 11¼-314.
127 Designation of initial board members; Sec. 11¼-315. Statutory provisions governing district;
128 Sec. 11¼-316. Notice to subsequent purchasers; Sec. 11¼-321. District name; Sec. 11¼-322.
129 Authority for article; Sec. 11¼-323. Authorization for exercise of special powers; Sec. 11¼-
130 324. Establishment of community development district; Sec. 11¼-325. Designation of initial
131 board members; Sec. 11¼-326. Statutory provisions governing district; Sec. 11¼-327. Notice
132 to subsequent purchasers; Sec. 11¼-330. Short title; Sec. 11¼-332. Name; Sec. 11¼-333.
133 Location; Sec. 11¼-334. Ownership; Sec. 11¼-335. General goals of development; Sec.
134 11¼-336. General plan of development; Sec. 11¼-337. Interpretation of community plan;
135 Sec. 11¼-338. Permitted variations; Sec. 11¼-339. Reserve area; Sec. 11¼-340.

136 Fractionalization of tracts; Sec. 11¼-341. General; Sec. 11¼-342. Specific definitions; Sec.
137 11¼-343. General conditions and procedures; Sec. 11¼-344. Procedures for area master plan
138 approval; Sec. 11¼-345. Procedures for final plan and plat approvals; Sec. 11¼-346.
139 Procedures for parcel plan approval; Sec. 11¼-347. Procedures for site plan approval; Sec.
140 11¼-348. Purpose; Sec. 11¼-349. Creation of a Uniform Community Development District;
141 Sec. 11¼-350. Water system; Sec. 11¼-351. Sewer system; Sec. 11¼-352. Surface water
142 management; Sec. 11¼-353. Utilities; Sec. 11¼-354. Energy; Sec. 11¼-355. Streets; Sec.
143 11¼-356. Purpose; Sec. 11¼-357. Agricultural uses; Sec. 11¼-358. Alcoholic beverages;
144 Sec. 11¼-359. Animals in residential areas; Sec. 11¼-360. Cluster developments; Sec. 11¼-
145 361. Essential infrastructure facilities; Sec. 11¼-362. Excavations; Sec. 11¼-363. Fences,
146 walls and hedges; Sec. 11¼-364. Guest houses; Sec. 11¼-365. Major recreational equipment
147 and commercial vehicles in residential areas; Sec. 11¼-366. Model units; Sec. 11¼-367. Oil
148 and gas resources; Sec. 11¼-368. Setbacks; Sec. 11¼-368.1. Unaddressed uses; Sec. 11¼-
149 368.2. Zero lot line development; Sec. 11¼-369. Purpose; Sec. 11¼-370. Designation of use;
150 Sec. 11¼-371. Conservation Area District; Sec. 11¼-372. Golf Course District; Sec. 11¼-
151 373. Residential districts (general); Sec. 11¼-374. Commercial districts (general); Sec. 11¼-
152 374.1. Utility District and Park/Utility District; Sec. 11¼-375. Purpose; Sec. 11¼-376.
153 Landscaping; Sec. 11¼-377. Signs; Sec. 11¼-378. Administration; Sec. 11¼-379. Appeals
154 from decision of administrative official; Sec. 11¼-380. Fees; and Sec. 11¼-381. Civil and
155 criminal enforcement.

156

157 The adoption of this Ordinance does not affect the validity or the establishment of any
158 community development district or other special district, or the validity of these provisions
159 within the Code of Laws and Ordinances of Lee County, Florida.

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161 **Section 2. Ratification.**

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163 The Village hereby ratifies the creation and existence of all community development
164 districts within the Village of Estero created by the Lee County.

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166 **Section 3. Effective Date.**

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168 This Ordinance shall become effective immediately upon its adoption.

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[SIGNATURE PAGE FOLLOWS]

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181 PASSED on first reading this 3rd day of October, 2018.

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183 PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of
184 Estero, Florida this ____ day of ____, 2018.

185

186 Attest: VILLAGE OF ESTERO, FLORIDA

187

188

189 By: _____ By: _____
190 Kathy Hall, MMC, Village Clerk James R. Boesch, Mayor

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192

193 Reviewed for legal sufficiency:

194

195

196 By: _____
197 Burt Saunders, Esq., Village Attorney

198

199

200	Vote:	AYE	NAY
201	Mayor Boesch	_____	_____
202	Vice Mayor Ribble	_____	_____
203	Councilmember Batos	_____	_____
204	Councilmember Errington	_____	_____
205	Councilmember Levitan	_____	_____
206	Councilmember McLain	_____	_____
207	Councilmember Wilson	_____	_____

ATTACHMENT 2

GRAY | ROBINSON
ATTORNEYS AT LAW

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DEREK.ROONEY@GRAY-ROBINSON.COM

MEMORANDUM

TO: Village Council
CC: Steve Sarkozy, Village Manager
FROM: Derek Rooney, Assistant Village Attorney
DATE: November 15, 2018
SUBJECT: Codification Repeal Round One Ordinances – Continued Ordinances

The following are updates to two ordinances continued by the Council for additional legal review.

Ordinance No. 2018-20 An Ordinance Repealing Development District Provisions of the Lee County Code Previously Adopted by Reference

The provisions referenced in this ordinance related to the removal of several sections of the Village Code which describe numerous community development districts (“CDD”) established by Lee County. Concerns have been raised that by removing such provisions from the Village Code the existence of these CDDs may be in jeopardy. While the concern is understandable, the proposed ordinance will have no impact on the existence of any CDD.

Since this ordinance was first heard by the Council, this office has worked to get consensus amongst the various legal counsels of area CDDs. While responsive parties have agreed that the proposed ordinance does not negatively impact the existence or operation of these CDDs the Village Attorney recommends continuing this item for one additional meeting while we await additional responses.

Ordinance No. 2018-21 An Ordinance Repealing Drainage and Water Control Provisions of the Lee County Code Previously Adopted by Reference

The provisions referenced in this ordinance remove references in the Village Code to the West Coast Inland Navigation District and provisions of Lee County water regulation, specifically,

Village Council
November 15, 2018
Page 2

the Lee County Water Conservation Ordinance and Lee County's stormwater management and conservation program. Similar to the other ordinances discussed herein, these changes are specific to the Village's codification efforts and have no effect on the validity of either the West Coast Inland Navigation District or Lee County's water regulation efforts. The former has been codified in the Lee County code for reference but the actual authority for the Navigation District comes from special acts of the Legislature and Chapter 374, Florida Statutes, neither of which cannot be amended by the Village's ordinance.

With regards to the local water regulations, the proposed ordinance does not repeal the county programs or their applicability, if any, to the Village of Estero. Lee County's stormwater and water conservation utility provisions proposed to be removed by the proposed ordinance are not currently in place within the Village, as the program was discontinued by Lee County, and therefore their removal would have no negative impact on the Village. Additionally, provisions of the Code relating to irrigation and water conservation are limited by their very terms to unincorporated areas of the County, if the Council wishes to implement similar restrictions further amendments to the Code will be needed.

If you have any questions regarding the existing regulations or ordinances in question, please feel free to contact me directly.

ATTACHMENT 2

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