

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
November 28, 2018

Agenda Item:

Ordinance No. 2018-21 An Ordinance of the Village Council of the Village of Estero, Florida, Repealing Drainage and Water Control Provisions of the Lee County Code Previously Adopted by Reference; and Providing an Effective Date

Description:

First reading of Ordinance No. 2018-21 was held on October 3, 2018. At the October 17, 2018 second reading/hearing, concerns were raised and the second reading/hearing was continued to November 28, 2018. 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, the Lee County Water Conservation Ordinance and Lee County's stormwater management and conservation program. 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.

Action Requested:

Motion to adopt Ordinance No. 2018-21.

Financial Impacts:

None.

Attachments:

1. Ordinance No. 2018-21
1. Memorandum from Derek Rooney, Assistant Village Attorney

ATTACHMENT 1

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2018 - 21

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, REPEALING DRAINAGE AND WATER CONTROL 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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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 and are hereby rescinded and repealed as ordinances of the Village of Estero:

Lee County Code Sec. 12-187. Effect of prior acts; Sec. 12-188. Creation of district [West Coast Inland Navigation District]; district to operate through a board of commissioners; Sec. 12-189. Effect of congressional "River and Harbor Act."; Sec. 12-190. Board of commissioners of district; Sec. 12-191. Officers of board of commissioners; quorum; required votes; special meetings; Sec. 12-192. Reimbursement for expenses incurred by board members; Sec. 12-193. Acquisition of right-of-way and other needed lands; Sec. 12-194. Condemnation proceedings; Sec. 12-195. Authority to issue bonds; Sec. 12-196. Power to borrow money; Sec. 12-197. Power to convey property; Sec. 12-198. Power to levy

46 tax; Sec. 12-199. Tax assessment and collection procedure; Sec. 12-200. Construction,
47 reconstruction, maintenance and operation of bridges over waterway; Sec. 12-201.
48 Delegation of powers by district; Sec. 12-202. Power to furnish data to federal government
49 and public; Sec. 12-203. General power to perform acts in furtherance of construction of
50 waterway; Sec. 12-204. Power to perform administrative procedures in furtherance of
51 objectives; power to contract; Sec. 12-205. Franchises and privileges to conduct services on
52 property under control of district; Sec. 12-206. Land owned by district tax exempt; Sec. 12-
53 207. Depositories for district funds; payment of funds out of district; Sec. 12-208. Annual
54 statement to be published; Sec. 12-209. Agreements relating to bridge construction and
55 alteration; Sec. 12-210. Annual audit; Sec. 12-211. Liberal construction; Sec. 12-261. Short
56 title, purpose and territorial scope; Sec. 12-262. Definitions; Sec. 12-263. Permanent water
57 restrictions, declaration of water shortage, and water shortage emergency; Sec. 12-264.
58 Enforcement and penalties; Sec. 12-265. Water service provided by public and private
59 utilities; Sec. 12-266. Florida Administrative Codes incorporated by reference; Sec. 12-267.
60 Conflict; Secs. 12-268—12-280. Reserved. Sec. 12-281. Authority; Sec. 12-282. Findings
61 and determinations; Sec. 12-283. Definitions; Sec. 12-284. Establishment of water
62 conservation utility; Sec. 12-285. Operating budget; Sec. 12-286. Required levels of rates for
63 utility fees and assessments; Sec. 12-287. Imposition of utility fees; Sec. 12-288. Establishing
64 area of operation, benefit areas and utility fees; Sec. 12-289. Rate schedule; Sec. 12-290.
65 Assessments; Sec. 12-291. Establishing benefit areas for assessments; Sec. 12-292. Credits
66 against utility fees and assessments; Sec. 12-293. Notice requirements for resolutions
67 establishing or modifying area of operation, benefit areas and setting or modifying rates; Sec.
68 12-294. Billing and payment of utility fee or assessments; penalties; adjustments; Sec. 12-
69 295. Adjustment of utility fee and assessments; correction; Sec. 12-296. Fees-in-lieu-of and
70 availability charges; Sec. 12-297. Establishment of funds; Sec. 12-298. Issuance of bonds;
71 and Sec. 12-299. Petition to courts.

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The adoption of this Ordinance does not affect the validity or the establishment or powers of the West Coast Inland Navigation District, the Lee County Water Conservation Ordinance, Lee County's stormwater and water conservation utility, or the validity of any continuing provisions of the Code of Laws and Ordinances of Lee County, Florida.

Section 2. Effective Date.

This ordinance shall become effective immediately upon adoption.

PASSED on first reading this ____ day of _____, 2018.

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

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
James R. Boesch, Mayor

ATTACHMENT 2

GRAY | ROBINSON
ATTORNEYS AT LAW

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FORT MYERS
GAINESVILLE
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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,

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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.