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## MEMORANDUM

**TO:** Village of Estero Council

**CC:** Burt Saunders, Esq.  
Derek Rooney, Esq.

**FROM:** Matthew Roepstorff

**DATE:** May 30, 2019

**SUBJECT:** Authority of Village of Estero to Regulate Septic Systems

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Dear Council,

This memorandum regards the Village of Estero's (the "Village") authority to regulate septic systems, including mandating repairs and regular inspections of septic systems. The Florida Legislature and courts of law have mandated that "proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public." Florida Statutes, Chapter 381.0065 – 381.0067, govern the installation and regulation of onsite sewage treatment and disposal systems, also known as "septic systems." Section 381.0065(4) requires any person wishing to construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system to first obtain a permit approved by the Department of Health (DOH). The DOH has issued strict criteria for the conditions and regulations allowing for permitting and construction of septic systems, which are listed fully in Section 381.0065(4).

Section 381.00651, F.S. sets the parameters for county or municipal adoption of ordinances for inspection and assessment of septic systems. With certain exceptions, a county or municipality "may at any time develop and adopt by local ordinance an onsite sewage treatment and disposal system evaluation and assessment program, provided such program meets and does not deviate from the requirements of this section." The requirements for such septic system evaluation and assessment programs are listed in Section 381.00651(6). Further, Section 381.00651(7) lays out the procedures which shall be used for conducting such evaluations. However, nothing in these sections shall "[L]imit county and municipal home rule authority to act outside the scope of the evaluation and assessment program set forth in this section" or prohibit a county or municipality from "[A]dopting local environmental and pollution abatement ordinances for water quality

improvement as provided for by law if such ordinances do not repeal, suspend, or alter the requirements or limitations of this section.” *Section 381.00651(10)*.

With the aforementioned parameters in place, the Village is free to exercise its municipal powers to regulate septic systems; provided that, in general, installation and repair of septic systems must obtain the proper permitting from the DOH, and inspections of such systems must meet and not deviate from the requirements under Section 381.00651, F.S. Additionally, there is no other legislation which preempts county or municipal authority to regulate septic systems.

In order to provide and fund improvements, Florida Statutes provide authority for municipalities to levy and collect special assessments against property benefiting from such improvements. Importantly, the special assessments may be levied only for the purposes enumerated in Section 170.01(1) and shall be levied only on the benefited real property. *Section 170.01(2)*. Section 170.01(1), F.S. sets forth an enumerated list of improvements for which a special assessment may be levied and collected. Section 170.01(1), F.S. expressly lists the construction, reconstruction, repair, renovation, excavation, grading, stabilization, and upgrading of sanitary sewers as an enumerated improvement available for special assessment. Therefore, should the Village wish to construct or upgrade existing sewer lines and sewer systems to replace septic systems, the Village may levy and collect special assessments against the benefitted properties. The levy, proration, and collection of such special assessments must follow the procedures set forth in Chapter 170, F.S.