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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2018 - 08

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, ESTABLISHING
PROCEDURES FOR THE DECLARATION OF A STATE
OF LOCAL EMERGENCY; PROVIDING DEFINITIONS;
PURPOSE AND INTENT; AUTHORITY TO DECLARE A
LOCAL STATE OF EMERGENCY; METHOD OF
DECLARING AND TERMINATING A LOCAL STATE
OF EMERGENCY; AUTHORITY OF VILLAGE
COUNCIL; EFFECT OF DECLARATION OF A STATE
OF LOCAL EMERGENCY; PROHIBITIONS DURING
DECLARED STATE OF LOCAL EMERGENCY;
EMERGENCY MEASURES AND ACCESS TO
EMERGENCY PREPAREDNESS FUND; PENALTIES
FOR VIOLATIONS; REPEAL OF PRIOR ORDINANCES;
CODIFICATION; CONFLICT AND SEVERABILITY;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Village Council of the Village of Estero, Florida, desires to establish procedures for the declaration of a state of local emergency in the event of a natural or manmade disaster or emergency that affects or threatens to affect the Village; and

WHEREAS, Chapter 252, Florida Statutes, authorizes municipalities to declare a state of local emergency and to waive procedures and formalities otherwise required of political subdivisions to take whatever prudent action is necessary to ensure the health, safety, and welfare of the Village in the event of a state of local emergency; and

WHEREAS, there may be instances when it is difficult or impossible to obtain a quorum of Council Members for the purpose of convening an emergency meeting to declare a state of local emergency; and

WHEREAS, the Village Council desires to designate certain Village officials, delegate to those officials the authority to declare a state of local emergency, and authorize certain actions by those officials to respond to the emergency when it is reasonably determined that a quorum of the Village Council is physically unable to meet; and

WHEREAS, because of the existing and continuing possibility of the occurrence of a natural or man-made disaster or emergency and potential damage and destruction resulting therefrom and, in order to ensure the readiness of the Village to manage such events and generally provide for the protection of the public health, safety and welfare, it is hereby determined to be in the best interests of the Village of Estero that the following Ordinance be adopted.

46 **NOW, THEREFORE, IT IS HEREBY ORDAINED** by the Village Council of the
47 Village of Estero, Florida:

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49 **Section 1.** The forgoing recitals are true and correct and are incorporated herein by
50 this reference.

51
52 **Section 2.** **Definitions.**

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54 For the purpose of this Article, the term:

55
56 (a) "Disaster" shall have the meanings ascribed by Section 252.34, Florida Statutes, and
57 as may be amended from time to time by the Legislature or as construed by the
58 courts of this state.

59
60 (b) "Emergency" shall have the meanings ascribed by Section 252.34, Florida Statutes,
61 and as may be amended from time to time by the Legislature or as construed by the
62 courts of this state.

63
64 **Section 3.** **Purpose and Intent.**

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66 It is the intent of the Village Council to delegate to certain officials the authority to declare a
67 state of local emergency in the event a natural or man-made threat to the Village, its facilities,
68 or its inhabitants, which results or may result in substantial harm or damage to or loss of
69 property, and to authorize those officials to take certain actions to respond to the emergency at
70 hand.

71
72 **Section 4.** **Authority to Declare a Local State of Emergency.**

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74 When an emergency situation has placed the Village, its facilities, or its inhabitants in danger
75 of loss of life or property, the Village Council is authorized at any regular, special or emergency
76 meeting to adopt a resolution declaring a local state of emergency.

77
78 When a meeting of the Village Council cannot practically be convened due to lack of a quorum,
79 a local state of emergency may be declared by the Mayor, the Vice Mayor in the Mayor's
80 unavailability, or by any other councilmember in the absence of the Mayor and Vice Mayor.
81 In an instance where the emergency has led to the unavailability of all councilmembers then
82 the Village Manager or their designee is thereby authorized to declare a local state of
83 emergency. Unavailability of members of the Village Council constituting a quorum shall be
84 determined by the Village Manager or in his or her absence, by the Mayor or Vice Mayor, by
85 email inquiries and phone calls to all of the members of the Village Council.

86
87 Despite the lack of a quorum due to the unavailability of members of the Village Council,
88 every reasonable effort shall be made to contact, continually update, and request the opinions
89 of all members of the Village Council, wherever they are located, with respect to the actions
90 being authorized hereunder.

91 **Section 5. Declaration of Local State of Emergency by Written Proclamation;**
92 **Termination.**

93
94 A local state of emergency will be declared by written proclamation which is signed by an
95 authorized Village official pursuant to Section 4. Such local state of emergency will continue
96 until the Mayor, Vice Mayor, Village Manager or Village Manager's designee finds that the
97 threat or danger no longer exists or until a meeting of a quorum of the Council is convened and
98 terminates the state of local emergency by written proclamation. The duration of a local state
99 of emergency cannot exceed seven (7) days without being extended, as necessary, by
100 authorized Village officials through the issuance of additional proclamations, in seven (7) day
101 increments.

102
103 **Section 6. Authority of Village Council.**

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105 Nothing in this Article shall be construed to limit the authority of the Village Council to
106 declare, extend or terminate a state of local emergency, limit or take any actions or authority
107 prescribed herein when convened in a regular, special, or emergency meeting. Furthermore,
108 the Village Council is empowered to ratify all prior emergency actions of authorized Village
109 officials in response to the local state of emergency.

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111 **Section 7. Effect of Declaration of Local State of Emergency.**

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113 A declaration of state of local emergency shall activate applicable Village emergency
114 management programs and constitutes authority for the Village to act in accordance with
115 emergency procedures as authorized by law. Such authority includes but is not limited to the
116 powers conferred by the State Emergency Management Act, Chapter 252, Florida Statutes.

117
118 **Section 8. Prohibitions During Declared State of Local Emergency.**

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120 Whenever a local state of emergency declared pursuant to this Article is in effect, the following
121 prohibitions shall apply throughout the Village, unless and until one or more of such
122 prohibitions have been waived or modified by action of the Village Council at a general, special
123 or emergency meeting where a quorum is present:

- 124
125 (a) It shall be unlawful and an offense against the Village for any person, firm, or
126 corporation to use a potable water supply for any purpose other than cooking, drinking
127 or bathing.
128
129 (b) It shall be unlawful for any person to be out on the public rights-of-way or other public
130 areas of the Village between dusk and dawn, except for law enforcement officers,
131 members of the Estero Fire Rescue, San Carlos Park Fire Protection & Rescue Service
132 District, Bonita Springs Fire Control & Rescue District, or other Fire Districts
133 providing mutual aid, emergency medical personnel, Village Council Members, and
134 other persons authorized by the Village Manager.
135

- (c) It shall be unlawful for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the Village, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. The evidentiary standards and defenses contained in Section 501.160, Florida Statutes, as amended, shall be used to determine whether a price is unconscionable.

Section 9. Emergency Measures and Access to Emergency Funds.

In addition to any other powers conferred by law, upon the declaration of a local state of emergency, the Village Manager or his or her designees will have the power and authority to order and promulgate all or any of the following emergency measures in whole or in part as necessary to protect the health, safety, or welfare of persons or property and to waive any procedural formalities otherwise required by law pertaining to these measures:

- (a) To utilize emergency or reserve funds of the Village may be accessed by the Village Manager for any purpose.
- (b) To appropriate funds, incur debt and expend such other funds as necessary.
- (c) To incur obligations and enter into contracts consistent with Village's emergency procurement regulations.
- (d) To request federal, state, or local assistance or to invoke mutual-aid agreements.
- (e) To obtain and distribute equipment, materials, and supplies for emergency purposes.
- (f) To coordinate and implement emergency management programs, including mutual aid programs, applicable to the emergency conditions.
- (g) To appoint, employ, remove, or provide such personnel, with or without compensation, as needed.
- (h) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government, victim relief, or direction and control of emergency operations.
- (i) To suspend or limit the sale of alcohol.
- (j) To assign or make available for duty the resources and facilities of the Village, including employees, property, or equipment to other entities for emergency operation purposes within or outside the Village limits.
- (k) To make provisions for availability and use of temporary emergency housing or warehousing of relief supplies.

- (l) To utilize all available resources of the Village as reasonably necessary to cope with the emergency.

Section 10. Penalties for Violations.

Any person who violates any provision of this Article shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment not exceeding sixty (60) days, or both.

Section 11. Repeal of Prior Ordinances.

Lee County Ordinance 87-1 as codified in Chapter 13½, Sections 13½-31 thru 13½-38 the Code of Laws and Ordinances of Estero is hereby repealed in its entirety and have no force and effect. In addition, all sections or parts of section of the Code of the Village of Estero, any other Ordinance(s) or Resolution(s) of the Village in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. Codification.

The Village Council intends that this Ordinance be made part of the Code of the Laws and Ordinances, of the Village of Estero, Florida; and that the sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Village Manager without the need for a public hearing.

Section 13. Conflict and Severability.

In the event any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

Section 14. Effective Date.

This Ordinance shall take effect immediately upon its adoption by the Village Council.

PASSED on first reading this 6th day of June, 2018.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 20th day of June, 2018.

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Attest:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: James R. Boesch
James R. Boesch, Mayor

Reviewed for legal sufficiency:

By: Burt Saunders
Burt Saunders, Esq., Village Attorney

Vote:	AYE	NAY
Mayor Boesch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice Mayor Ribble	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Batos	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Errington	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Levitan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember McLain	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>