VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2015 - 13

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, PROVIDING FOR THE RECOVERY OF PROFESSIONAL FEES AND COSTS AND VILLAGE STAFF COSTS FOR THE REVIEW OF CERTAIN ENUMERATED DEVELOPMENT APPLICATIONS AND PROCEDURES THEREFORE; PROVIDING FOR FIXED FEES FOR THE VILLAGE REVIEW OF CERTAIN ENUMERATED DEVELOPMENT APPLICATIONS; PROVIDING FOR PAYMENT OF COST RECOVERY AND FIXED FEES; PROVIDING FOR CONFLICTS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4 3, 2014, pursuant to the Charter of the Village of Estero ("Charter") created by Ch. 2014-249, Laws of Florida and as amended by Ch. 2015-193, 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 provides at Section 11, "General Provisions", paragraph (5) "Transitional Ordinances and Resolutions", 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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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 that provides for the recovery of actual costs from applicants for the Village's review of certain enumerated development applications as set forth herein, and for the recovery of fixed fees from applicants for the Village's review of certain other development applications; and

WHEREAS, the Village intends that any county ordinances that are in conflict with this ordinance shall be rescinded and superseded by this ordinance upon its adoption; and

WHEREAS, the Village intends that any Lee County resolution adopting fees for the review of development applications shall be superseded by the fees adopted by this Ordinance for projects located within the Village of Estero; and

WHEREAS, the Village Council has considered this ordinance at a duly noticed public hearing as required by law.

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

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. **Cost Recovery Fees for Review of Development Applications.**

(a) Cost Recovery Fees. There is hereby imposed a fee for the recovery of various costs of the Village's administrative and outside fee consultant processing and review of applications, submissions, or requests concerning development, utilization, or improvement of property in the Village of Estero, including, without limitation, the preparation of staff reports and attendance at public hearings related to such applications. Such fee is to be equal in amount to the Village's actual costs, in terms of staff and outside fee consultants' time expended in such review and processing (but shall not include the cost of one pre-application meeting per application). Applications subject to cost recovery shall include but not be limited to the following reviews:

1. Planned Development (including original plan, amendments and final approval)
2. Development of Regional Impact (including all DRI related reviews such as abandonments, substantial and non-substantial deviations, ordinance and agreement reviews, time extensions, and notices of proposed change.)
3. Special Exceptions
4. Variances
5. Development Order (including new submittals, major or minor modifications, and resubmittals)
6. Plat
7. Vacation
8. Comprehensive Plan Amendment
9. Rezoning (including but not limited to applications for planned development rezoning, including amendments and deviations)
10. Unity of Title
11. Any other type of development project review as determined by the Village Manager or designee as being suitable in scope and complexity for treatment under the cost recovery system.

(b) Persons who file any review request which necessitates outside fee consultant review and processing shall pay, prior to or at the time the review request is made, an initial preliminary deposit which shall be credited toward the fee charged for such review and processing, and shall pay additional deposits as may be required from time to time.

(c) When the person pays the initial deposit, a financial account for said person's review request (the "project account") will be opened and maintained throughout the entire review process until the person receives a certificate of compliance or the community development department or other appropriate Village agent (depending on the nature and genesis of the application) determines that no further action is necessary for the review and processing of the review request. At either of which time the project account will be closed and any remaining funds therein shall be refunded to the person depositing same, no later than two months after the project account's closing date. The project account will be monitored on a periodic basis. Whenever the account balance is 20 percent or less of the original escrowed deposits, a supplemental deposit will be required before any further review or processing continues. The person making the initial deposit will be notified when a supplemental deposit will be required. The amount of the supplemental deposit will be 50 percent of the initial deposit. Several supplemental deposits may be necessary depending on the complexity of the review request.

(d) The Village's outside fee consultants who are involved in the review and processing of the enumerated Cost Recovery review requests shall maintain records of the time expended and tasks conducted regarding each such request. A debit based upon the time expended and the adopted rates per hour, as approved by the Village Council, shall be charged against the project account. The resulting fees shall be adopted in a Cost Recovery Fee Schedule. It is the Village's intent that the charges reflect the costs of administering this program, which charge shall be based upon the actual effort involved for such administration.

(e) The Cost Recovery Fee Schedule and the amount of the initial deposit for the different types of review requests per the Cost Recovery Fee Schedule shall be established by resolution of the Village Council, which may be amended from time to time. The Cost Recovery Fee Schedule shall be based on the adopted rates per hour of the Villages' outside fee consultants. In addition to the initial deposit, the applicant shall pay 10% of the initial deposit fee as an administrative charge for the costs of Village staff review of the application. It is the express intent of the Village Council of Estero, Florida, in enacting this cost recovery program that the Village's costs of outside fee consultant review and processing of review requests, as required or necessitated now or in the future by the village's ordinances, resolutions, policies, or procedures, shall be borne by the person initiating the review request.

(f) Except as provided herein, any notification provided in this section for supplemental deposits from the Village of Estero to a person initiating a review request shall be deemed sufficient if made by a telephone call to such person or his or her agent with a confirming certified letter to follow. It shall be the duty of persons initiating review requests to provide on the filed review requests a continuously updated address and telephone number where said persons or their agents can be reached for purposes of such notification. If an attempt to notify a person initiating a review request or his or her agent is frustrated because such furnished phone numbers or addresses were not correct or up to date when the

notification attempt was made, such frustrated attempt shall be deemed sufficient notice for purposes of this section.

(g) The cost recovery fees shall not apply to review requests which are originally initiated by or on behalf of the Village of Estero or another governmental entity so long as the initiating governmental entity does not charge the Village of Estero for its review, processing, and comment upon the Village of Estero's review requests of a similar type or nature.

Section 3. Fixed Fees for Review of Certain Development Applications.

(a) There is hereby imposed a fixed fee for certain administrative costs to cover the Village's costs of administration of certain development applications, which fee shall not duplicate the cost recovery fee, and which fee or fees shall be established by resolution of the Village Council from time to time. The fixed fee shall be imposed for those applications including but not limited to building permits, contractor licensing, and code enforcement hearing fees.

(b) Should the Village Manager determine that the Village's review of any development application will incur extraordinary costs not otherwise covered by the fixed fee, the Village Manager may require that the applicant pay a cost recovery fee instead of the fixed fee.

(c) The fixed fees shall not apply to review requests which are originally initiated by or on behalf of the Village of Estero or another governmental entity so long as the initiating governmental entity does not charge the Village of Estero for its review, processing, and comment upon the Village of Estero's review requests of a similar type or nature.

Section 4. Payment of Cost Recovery and Fixed Fees. Any application filed with the Village of Estero after the first reading of this Ordinance shall be subject to the fees established under this Ordinance.

Section 5. Conflicts. All sections or parts of sections of the Village of Estero Code of Ordinances in conflict herewith are intended to be repealed to the extent of the conflict.

Section 6. 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 7. Effective Date. This Ordinance shall be effective upon adoption at second reading.

PASSED on first reading this 23rd day of September, 2015.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 7th day of October, 2015.

Attest:

By: _____
Kathy Hall, MMC
Village Clerk

VILLAGE OF ESTERO, FLORIDA

By: _____
Nicholas Batos
Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq.
Village Attorney

Vote:	AYE	NAY
Mayor Batos	✓	
Vice Mayor Levitan	✓	
Councilmember Boesch	Excused Absence	
Councilmember Brown	✓	
Councilmember Errington	✓	
Councilmember Ribble	✓	
Councilmember Wilson	✓	