

ORDINANCE NO. 2024 - 15

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AMENDING ARTICLE II OF CHAPTER 10 OF THE VILLAGE CODE (LOCAL STATES OF EMERGENCY); MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Article II of the Village Code addresses the subject of local states of emergency; and

WHEREAS, historically, municipalities have made local “declarations of emergency” to allow extraordinary exercise of authority (such as to contract and to enforce curfews) on the part of municipal staff; and

WHEREAS, in more modern times, and as Florida has experienced more frequent region-wide emergencies usually related to tropical storms or hurricanes, Florida law has evolved as related to the waiving of normal procedures and rules in an emergency, including vesting in the Governor significant authority to issue detailed Executive Orders impacting local, as well as state government powers; and

WHEREAS, in addition to the evolution of Florida law related to the declaration of states of emergency, the Village Council has adopted detailed rules and policies related to the Village’s response to emergencies, including the adoption of Resolution 2024-15 (creating a Village Emergency Response Plan) and Ordinance 2024-02 (creating a new Village Procurement Code containing detailed emergency contracting and spending authority); and

WHEREAS, the Village maintains standing contracts with providers of emergency debris removal and monitoring services able to be activated by Village staff in the aftermath of a hurricane or similar event creating substantial debris; and

WHEREAS, in light of the foregoing state and local measures, and in an effort to further streamline and modernize the Village’s emergency declaration rules, the Village Attorney has proposed the amendments to the Village Code set forth in this Ordinance; and

WHEREAS, the Village Council finds that it is in the Village’s best interests to adopt the provisions of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Village Council of the Village of Estero, Florida, that:

Section 1. Article II of Chapter 10 (Local States of Emergency) of the Village Code is hereby amended as follows:

ARTICLE II. LOCAL STATES OF EMERGENCY

Sec. 10-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disaster shall have the meaning ascribed by Florida Statutes § 252.34 and as may be amended from time to time by the legislature or as construed by the courts of the State.

Emergency shall have the meaning ascribed by Florida Statutes § 252.34 and as may be amended from time to time by the legislature or as construed by the courts of the State.

Sec. 10-22. Purpose and intent.

It is the intent of the village council to delegate to certain officials the authority to declare a state of local emergency in the event a natural or manmade threat to the village, its facilities, or its inhabitants, which results or may result in substantial harm or damage to or loss of property, and to authorize those officials to take certain actions to respond to the emergency at hand.

Sec. 10-23. Authority to declare a local state of emergency.

- (a) When an emergency situation has placed the village, its facilities, or its inhabitants in danger of loss of life or property, the village council is authorized at any regular, special or emergency meeting to adopt a resolution declaring a local state of emergency.
- (b) When a meeting of the village council cannot practically be convened due to lack of a quorum, a local state of emergency may be declared by the mayor, the vice-mayor in the mayor's unavailability, or by any other councilmember in the absence of the mayor and vice-mayor. In an instance where the emergency has led to the unavailability of all council members then the village manager or the manager's designee is thereby authorized to declare a local state of emergency through a written proclamation. Unavailability of members of the village council constituting a quorum shall be determined by the village manager or, in the manager's absence, by the mayor or vice-mayor, by email inquiries and telephone calls to all of the members of the village council.
- (c) Despite the lack of a quorum due to the unavailability of members of the village council, the Manager shall make every reasonable effort to contact and keep continually updated all members of the village council, wherever they are located, with respect to the actions being authorized hereunder.

Sec. 10-24. Term of emergency declaration.

A local state of emergency will continue in effect until the date specified in the resolution or proclamation or, if no such date is set forth, then until the mayor, vice-mayor, village manager or village manager's designee finds that the emergency or disaster conditions no longer exist or until the village council terminates the state of local emergency. The duration of a local state of

emergency cannot exceed seven days without being extended, as necessary, by authorized Village officials through the issuance of additional resolutions or proclamations, in seven-day increments.

Sec. 10-25. Limiting authority of Village Council.

Nothing in this article shall be construed to limit the authority of the village council to declare, extend or terminate a state of local emergency, limit or take any actions or authority prescribed herein when convened in a regular, special, or emergency meeting. Furthermore, the village council is empowered to ratify all prior emergency actions of authorized village officials in response to the local disaster or state of emergency.

Sec. 10-26. Effect of declaration of local state of emergency.

A declaration of state of local emergency shall activate applicable village emergency management programs and constitutes authority for the village to act in accordance with emergency procedures as authorized by law. Such authority includes, but is not limited to, the powers conferred by Florida Statutes chapter 252.

Sec. 10-27. Prohibitions during declared state of local emergency.

Whenever a local state of emergency declared pursuant to this article is in effect, the village council or other authorized declaring official may, if necessary to respond to the emergency or disaster, provide for the following prohibitions:

- (1) the use of a potable water supply for any purpose other than cooking, drinking or bathing.
- (2) being present on the public rights-of-way or other public areas of the village between dusk and dawn, except for law enforcement, fire, emergency medical, other designated first responders, or other persons authorized by the village manager.
- (3) renting or selling or offering 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 Florida Statutes § 501.160 shall be used to determine whether a price is unconscionable.

Sec. 10-28. Emergency measures and access to emergency funds.

In addition to any other powers conferred by law, village code, or adopted village emergency plans and procedures, upon the declaration of a local state of emergency, the village manager or the manager's designee 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:

- (1) To utilize emergency or reserve funds of the village may be accessed by the village manager for any purpose.

- (2) To appropriate funds, incur debt and expend such other funds as necessary.
- (3) To incur obligations and enter contracts consistent with village's emergency procurement regulations.
- (4) To request federal, state, or local assistance or to invoke mutual aid agreements.
- (5) To obtain and distribute equipment, materials, and supplies for emergency purposes.
- (6) To coordinate and implement emergency management programs, including mutual aid programs, applicable to the emergency conditions.
- (7) To appoint, employ, remove, or provide such personnel, with or without compensation, as needed.
- (8) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government, victim relief, or direction and control of emergency operations.
- (9) To suspend or limit the sale of alcohol.
- (10) 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.
- (11) To make provisions for availability and use of temporary emergency housing or warehousing of relief supplies.
- (12) To utilize all available resources of the village as reasonably necessary to cope with the emergency.

Sec. 10-29. Automatic declaration for regional disasters or emergencies; ceremonial proclamation if necessary for funding.

- (a) Notwithstanding the declaration adoption procedures set forth in § 10-23 of this division, in the event the president, the governor, or the county commission proclaims a state of emergency which includes a region inclusive of the entire county or the village specifically, then a local state of emergency shall be deemed to exist within the village during the term of such regional declaration without further need to act on the part of the village council or manager, except that if the village council or village manager determine any of the prohibitions set forth in § 10-27 are required, those shall be adopted by a separate local declaration.
- (b) In the event FEMA or any other source of emergency response expense reimbursement funds requires a village-specific declaration in order to qualify the village for reimbursement, the mayor shall be empowered to issue such a declaration by proclamation, with such content as the funding agency may require.

Section 2. For purposes of codification of any existing section of the Estero Village

Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Village Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Estero Village Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4)(a), prior to the date the public notice of the public hearing for this Ordinance was published, the Village prepared and posted on its website a business impact estimate which included: a) a summary of the Ordinance, a statement of the public purpose to be served by the Ordinance, b) an estimate of the direct economic impact of the Ordinance on private, for-profit businesses in the Village, c) an estimate of direct compliance costs that businesses may reasonably incur due to the Ordinance, d) identification of any new charge or fee on businesses created by the Ordinance or for which businesses will be financially responsible, e) an estimate of the Village's regulatory costs and of revenues from any new charges or fees imposed on businesses to cover such costs, and f) a good faith estimate of the number of businesses likely to be impacted by the Ordinance.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

ADOPTED ON SECOND AND FINAL READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

VILLAGE OF ESTERO, FLORIDA

Attest:

By: _____
Jon McLain, Mayor

By: _____
Carol Sacco, Village Clerk