

ORDINANCE NO. 2025-08

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, CREATING A NEW CHAPTER 23 REGARDING PROPERTY MAINTENANCE; CREATING A NEW ARTICLE II (UNSAFE STRUCTURES) OF CHAPTER 23 TO PROVIDE FOR THE PROHIBITION OF UNSAFE STRUCTURES AND FOR THE AUTHORITY OF THE VILLAGE TO ENSURE SUCH STRUCTURES ARE ABATED OR REMOVED; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, the Village Code does not currently contain a Property Maintenance Code; and

WHEREAS, the Village staff has begun examining models of Property Maintenance Codes with the intent of proposing such a new code in the near future; and

WHEREAS, the Village Code also does not currently address structures in the Village which have become unfit and unsafe for human habitation and which may pose a serious risk of danger to the health and safety of residents, and which may have become an attractive nuisance to children who may enter and become injured on such properties; and

WHEREAS, the Village's Building Official has recently become aware of several structures in the Village which may soon become unfit for human habitation or which are partially constructed but not advancing, and which, due to neglect and deterioration of structural elements, may in the future present a serious risk to residents and/or become a nuisance due to being an attraction to termites, rodents, and other undesirable living creatures; and

WHEREAS, a structure may be deemed unsafe (and thus a nuisance) if it poses a danger to the public health or safety, such as in the case of *Trushin v. City of Miami Beach*, 328 So. 2d 27 (Fla. 3d DCA 1976), wherein the court ruled that an apartment building was properly adjudged a nuisance and ordered demolished where it was concededly unfit for human habitation, did not comply with zoning ordinances, and would have cost at least 200% of the county tax-assessed value to repair; and

WHEREAS, court cases such as *Munzel as Trustee of Clyde W. Munzel Revocable Trust, under agreement dated May 3, 2005 v. Hillsborough County*, 574 F.Supp.3d 1145 (M.D. Fla. 2021) confirm that no compensation is due when the government's seizure of property was necessary to abate a nuisance or protect the public health; and

WHEREAS, the Florida Supreme Court has confirmed in *Keshbro, Inc. v. City of Miami*, 801 So. 2d 864, 875 (Fla. 2001) that government agencies need not compensate landowners if they can identify background principles of nuisance and property law that forbid the manner in which the landowner was using the property; and

WHEREAS, the court in *Dragomirecky v. Village of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004) found that, while it is true that a plaintiff may be financially harmed if a demolition

of an unsafe and uninhabitable building occurs, “the law permits such harm when it results from a valid exercise of police power”; and

WHEREAS, the court in *G.W. v. State*, 106 So. 2d 83, 85 (Fla. 3d DCA 2013) ruled that a lawmaking body, under its police power, “has broad authority...to enact laws which ‘promote the public health, safety, morals, and general welfare’ of its citizens”; and

WHEREAS, the Council desires to adopt a regulatory scheme which allows the Village to promptly address such structures in a way which will ensure that they are either fully secured or demolished, while also providing for procedures which will ensure the owners of such structures are afforded due process; and

WHEREAS, it is in the best interest of the Village, its residents, its visitors, and its businesses, to approve the provisions set forth in this Ordinance.

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

Section 1. A new Chapter 23 of the Village Code, entitled “Property Maintenance”, is hereby created.

Section 2. A new Article I of Chapter 23 of the Estero Village Code, entitled “**PROPERTY MAINTENANCE STANDARDS**” is hereby created, with § 23-1 – 23-39 reserved for future property maintenance standards.

Section 3. A new Article II of Chapter 23 of the Estero Village Code, entitled “**UNFIT/UNSAFE STRUCTURES**” is hereby created to read as follows:

ARTICLE II. – UNFIT/UNSAFE STRUCTURES

Sec. 23-40. Unfit or unsafe dwellings or structures.

When a dwelling or other structure including an accessory structure or manmade body of water, is found to be unfit or unsafe upon inspection by the building official, the building official shall require the repair, securing, demolition or removal thereof. For this article, the term “structure” includes all buildings, dwellings, accessory structures, and manmade bodies of water and any part or portion thereof.

Sec. 23-41. - Notice of violation; notice of condemnation/order to demolish.

When the building official verifies the existence of a structure which is unfit or unsafe, the building official shall determine the owner of record of the real estate upon which the structure is located and shall provide an initial notice of violation stating the requirements to secure or repair,

and/or an initial notice of condemnation/order to demolish requiring demolition and removal to the owner of record and other interested parties as set forth in § 23-44.

Sec. 23-42. - Authority to order demolition, removal, securing, etc.

- (a) If the conditions identified in the notice are not remedied within the time set forth in the notice, the building official shall order the vacation, demolition, removal or securing of any unfit or unsafe structure when any such part, by reason of inadequate maintenance, fire, age, decay, deterioration, structural defects, improper design, unstable foundation, termites, affording the opportunity of being a nuisance to the public or a haven for vagrants or criminals, acts of God or other causes, shall be dangerous to the occupants thereof or to surrounding buildings and the occupants thereof, a menace to public health, a fire hazard or so unsafe as to endanger life or property or render the use of the public streets dangerous. Notice of the order shall be provided as set forth in § 23-44.
- (b) When a structure is required to be secured, open windows and doors shall be secured with exterior plywood and suitably coated with an appropriate neutral color blending with or harmonizing with the exterior colors of the building so as to be as inconspicuous as possible. When securing with exterior plywood is not possible because existing structural damage or design features will not support a sound, secure application of plywood or for any other reason, the building official shall order securing against access and shall specify the industrial standard method and materials to be installed. Manmade bodies of water must be secured in a manner so as to eliminate any drowning or infection hazard, or must be filled completely with clean fill dirt or sand and adequate drainage provided so that water is not retained, does not accumulate and does not pond.
- (c) If the owner or other parties in interest do not repair, restore, demolish, secure or replace such part or parts of such structure within the specified time or such other reasonable time fixed in such order the building official may order vacation of the premises and proceed to remedy the conditions. When the county health officer verifies the existence of a rodent infestation in any structure that is to be demolished and removed, in order to preclude the migration of rodents, the building official shall require that the owner or person in charge carry out effective rodent extermination methods by a licensed structural pest control operator prior to demolition. Extermination techniques shall include ectoparasite control measures.
- (d) All unfit or unsafe structures which have been secured as a result of a notice of violation shall be subject to inspection and the owner of the structure shall be assessed a fee for each and every such inspection. For the purpose of ensuring that the vacant and unfit or unsafe structure is locked and/or secured, inspections will be conducted at 30-day intervals and the following fee collected in the manner provided by this article for each and every inspection conducted.
 - (1) Residential, commercial, institutional and industrial structures, per structure: \$70.00.
 - (2) Other structures (detached garages, accessory buildings, etc.), per structure: \$50.00.

Sec. 23-43. - Condition of lot after demolition.

A lot from which a structure is demolished shall be properly filled, graded and seeded with grass seed or sodded within five days of the date of completion of the demolition.

Sec. 23-44. - Manner of serving notice.

- (a) For the purpose of providing notice, interested parties shall be the owner of the property as shown on the county tax rolls, other persons whose names appear on the county tax rolls as having an interest in the property, and the tenant or occupant, if any, of the property, as well as other persons of record interest, which may include the mortgagee, contract purchaser (if known), agent with power of attorney (if known), and any person claiming an interest under a lis pendens (if known).
- (b) Ten days or more prior to the demolition or securing of any unsafe structure, the notice of condemnation/order to demolish shall be posted on the front of the property and shall be delivered to the interested parties either:
 - (1) By personally delivering a copy thereof to the party to be notified;
 - (2) By leaving such copy at such person's usual place of residence with some person of the household above 18 years of age and informing such person of the contents thereof;
or
 - (3) By either registered or certified United States mail with return receipt requested.

If the name of any interested party or their place of residence or their post office address cannot be ascertained after diligent search or in the event a notice sent by either registered or certified mail shall be returned undelivered, notice shall be given by publishing a copy thereof two times in a newspaper of general circulation in the village as set forth in subsection (d) of this section and, if the name of such interested party is known, mailing a copy thereof to such person's last known address, if known.

- (c) A copy of such notice and order shall be posted in a conspicuous place at village hall and upon such structure.
- (d) If publication of notice is required, ten days or more prior to the demolition or securing of any unsafe structure, a notice of intent to secure and inspect and/or demolish shall be published on two different days in a newspaper of general circulation in the village. Such notice shall be substantially in one of the following forms:

Notice of Intent to Secure and Inspect

The owner or other interested parties having failed to either repair and/or secure the structure at [address] as ordered by the Village of Estero are hereby notified that the

Village will proceed to have the structure secured on or after [date] and a lien will be placed against the property to recover all costs.

If, as result of this notice, the structure is secured, notice is hereby given that the structure may be inspected on a monthly basis by the Village, a fee charged for that inspection, and a lien placed against the property for such fees.

To appeal this notice, interested parties must follow the procedure in Village Code § 23-48. Interested parties may contact [contact person, address, and phone number] for information.

Notice of Intent to Demolish

The owner or other interested parties having failed to demolish and remove the structure [address] as ordered by the Village of Estero are hereby notified that the Village of Estero will proceed to have the structure demolished and removed on or after [date], and a lien will be placed against the property to cover all costs.

To appeal this notice, interested parties must follow the procedure set forth in Village Code § 23-48. Interested parties may contact the [contact person, address, and phone number] for information.

Sec. 23-45. - Extension of time to comply with order.

- (a) If the interested parties have obtained a building or demolition permit within the specified period and in good faith and in due time have begun work to comply with the order, but it appears that they will not be able to complete the work by the date ordered, they may file a written request to the building official stating the reasons they have been unable to fully comply, and if reasonable grounds are shown therefor, the building official is authorized to issue extensions in writing not to exceed a total of 60 days in which to fully comply with the original order.
- (b) In exceptional cases, the building official may approve an additional 30-day extension upon written request if the party shows special hardship, unusual difficulty or unique problems. Requests for this extension shall be made either in person or by certified mail, return receipt requested, to the building official.

Sec. 23-46. - Action on failure to comply.

In the event that the owner or other interested parties shall fail to comply with any order issued under this article within the time therein fixed, and does not timely request an appeal, the village, acting through the village manager or designee, is authorized to vacate, demolish, remove or secure, either with village forces or by requesting bids for the work under the village's procurement code.

Sec. 23-47. - Assessment of cost of demolition, etc.; lien on property.

- (a) Upon expiration of the appeal period with no appeal having been taken, or upon expiration of a 30-day period following the denial of an appeal, or following an emergency demolition authorized and conducted in accordance with § 23-51, the building official, after proceeding under this article, shall report the abatement of the nuisance by the village; and the village council shall assess the entire cost of such vacation, demolition, removal or securing against the real property upon which such cost was incurred. The costs which may be assessed include the cost of rodent extermination where employed, all administrative costs (which shall include all costs related to any hearing before a special magistrate and any lien recording and releasing fees incurred by the village), postal expense, newspaper publication and other costs reasonably and necessarily incurred by the village, and attorney fees and costs. Such costs when assessed and recorded shall constitute a lien upon such property of the same stature and priority as code enforcement liens.
- (b) In those instances where the owner has repaired, secured or demolished a structure or caused such work to be done as the result of having received notice from the village ordering such repair work, demolition or securing, all costs described in subsection (a) of this section reasonably and necessarily incurred by the village shall be assessed against the property and shall constitute a lien upon such property.
- (c) The village shall record a notice of lien in the county public records. The notice of lien shall show the nature of the lien, the amount thereof, the name(s) of the person(s) or entity having ownership, and an accurate legal description of the property. The principal amount of all liens under this section which remain unpaid after 30 days from the date of filing the lien shall bear interest at the statutory rate until the principal and interest are paid in full. All interest shall also constitute a lien against the property, and shall be treated in all respects, including foreclosure and compromise of such liens, as provided for in Florida Statutes § 162.09(3).

Sec. 23-48. - Appeal procedure.

- (a) Appeals may be taken from an order, a notice of condemnation/order to demolish, or notice of violation/order for securing a structure issued pursuant to this article by any interested party who has been aggrieved, except in emergency cases as set forth in § 23-51. Such party is afforded a right of hearing upon payment of a filing fee of \$100.00 and a written request for such hearing filed with the village clerk within ten days of service of the second notice of violation/order for securing or the posting or publication of the second notice or notice of condemnation/order to demolish required by § 23-44 whichever is later. Failure to affect personal notice shall not prevent the village from performing the demolition or attaching a lien on the property.
- (b) A notice of the appeal hearing by a special magistrate shall be published in the same manner as the village publishes notice of meetings, except that notice of the magistrate hearing shall be published at least ten days prior to the time and place of hearing. When the findings of the special magistrate sustain the building official, the special magistrate may set a new

deadline date for compliance or authorize the building official to proceed at the expiration of 30 days to demolish and remove the structure and report the cost to the village council.

- (c) The authority of and procedures to be followed by the special magistrate shall be that which is provided for in article II (code compliance) of chapter 1 of this code. In any hearing before the special magistrate, formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of the state. Each party shall have the right to be represented by counsel, to call and examine witnesses under oath, to introduce documentary evidence or exhibits, to cross-examine opposing witnesses on any relevant matter even though the matter was not covered under direct examination, to impeach any witness regardless of which party first called him to testify, and to submit rebuttal evidence. Each hearing shall be electronically recorded, the cost of which shall be included in the costs referenced in § 23-47 if a final order of demolition is entered.
- (d) The burden of proof by a preponderance of the evidence is upon the village to show that the structure is unfit or unsafe as defined in this chapter. At the hearing, the special magistrate shall affirm, modify, or reverse the findings of the building official that the structure is unfit or unsafe as provided for in this article. If the special magistrate agrees with the determination of the building official, he or she shall enter a final order making findings of fact, conclusions of law, and approving the demolition.
- (e) The special magistrate may grant an extension of time for demolition if at the hearing evidence is presented that families with minor children are residing in the building and that immediate relocation is not possible. However, no such extension of time shall exceed four months. If the special magistrate disagrees with the determination of the building official, he or she shall enter an order reversing the order of demolition. All orders shall be issued in writing and shall contain findings of fact and conclusions of law supporting the decision.
- (f) Any person aggrieved by the decision of the special magistrate may seek judicial review in accordance with the State appellate rules or other applicable law.

Sec. 23-49. - Appearance of interested parties before the special magistrate.

Any interested party appearing before the special magistrate may appear in person, by legal counsel or by an agent.

Sec. 23-50. - Reports of unsafe structures from village staff or private professionals.

Any person, including village employees, contractors or agents, may make reports to the building official concerning dwellings or structures which appear to be unfit or unsafe. The building official is authorized to utilize the services of private engineers, architects or other professionals in order to determine the condition of the structure in question and such costs shall be assessed in the same manner as provided for in § 23-47.

Sec. 23-51. - Emergency condemnations, authority to take action; lien on property.

- (a) In cases where there is imminent peril to the public safety or general welfare or immediate danger to the life or safety of any person or where the public is endangered by weather conditions, fire, other natural disasters or the particular location of the subject property, unless an unfit or unsafe structure is immediately repaired, demolished, or removed, the building official shall promptly cause such structure to be made safe or removed. For this purpose the building official and the village's fire marshal may at once enter such a structure or land on which it stands, or abutting land or structures, to perform an inspection with such assistance and at such cost as may be deemed necessary.
- (b) Upon inspection, the building official and the fire marshal shall jointly determine whether or not the structure requires immediate emergency demolition in order to maintain the safety and welfare of the owner, tenants, or public. A written report will document results of these inspections. Exterior and interior photographs of the building, structure, or portion thereof will be taken when feasible.
- (c) The building official may order the vacation of adjacent structures and may require the protection of the public by appropriate fencing or such other means as may be necessary, and for this purpose may close any public or private way.
- (d) If the building official determines there is sufficient time prior to demolition, a notice of intent to demolish will be provided via priority mail or courier delivery or telephone (if the parties are listed in the current phone directory) to the owner and interested parties informing it/him/her/them of the emergency demolition. This written notification must state the findings of the building official and the fire marshal, documenting cause for demolition or removal. Where the owner or other interested party fails to take immediate corrective action as ordered by the building official, the building official shall have the authority to promptly proceed with the abatement of the unsafe structure in accordance with this article. Failure to affect personal notice upon the individual owner or interested parties shall not prevent the village from performing the emergency demolition or removal and assessing a lien on the property. All costs incurred in the evaluation, vacation, securing and emergency demolition are the responsibility of the property owner, shall be reported to village council, and the council shall place a lien on the property as set forth in § 23-47.

Sec. 23-52. - Appeal and hearing of notice of emergency condemnation/order to demolish.

- (a) Appeals may be taken by any interested party of a notice of emergency condemnation/order to demolish only in cases where the structure has not been secured or demolished. Such interested party is afforded a right of hearing upon payment of a filing fee of \$100.00 and submission of a written request for such hearing to the village clerk within five days of receipt of actual or constructive notice of the emergency condemnation/order to demolish. The written request shall include the appellant's address, working telephone phone number, and working email address.

- (b) The hearing will be scheduled as soon as possible after receipt of the appeal. Notice of the public hearing of the appeal of emergency cases shall be given by telephone notice to the appellant's phone and by posting a copy of the special magistrate's agenda or a good and sufficient notice of such hearing in village hall for at least two days prior thereto. Notice will be mailed and emailed to the owner and interested parties at least two days prior thereto. Failure to affect personal notice upon an interested party shall not prevent the village from performing the emergency demolition or removal and assessment of a lien on the property as set forth in § 23-47.
- (c) Where the owner or other interested party failed to appear at the emergency condemnation/demolition hearing, such person may seek judicial review as prescribed by law.

Sec. 23-53. - Notice of special magistrate's action on/concerning appeal.

- (a) The building official shall advise the owner or record title holder of the special magistrate's action by the most expeditious means available, including telephone where urgent, excluding, however, notice by publication.
- (b) Unless otherwise required by law, appeals of a special magistrate's order may be made by filing a petition for writ of certiorari within thirty days of the order as provided for in the Florida Rules of Appellate Procedure.

Sec. 23-54. – Refusal to comply.

In the event the owner, agent or occupant fails to comply with the written notice or order of the building official or the special magistrate, the owner, agent and/or occupant shall be in violation of this article, subject to code enforcement proceedings as provided for in article II of chapter 1 of this code.

Section 4. For purposes of codification of any existing section of the Estero 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 5. 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 6. The Codifier shall codify the substantive amendments to the Estero Code contained in Sections 1 through 3 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 7. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the 4th day of June, 2025, by the Village Council of the Village of Estero, Florida.

ADOPTED ON SECOND AND FINAL READING on the 18th day of June, 2025, by the Village Council of the Village of Estero, Florida.

VILLAGE OF ESTERO, FLORIDA

Attest:

By: _____
Joanne Ribble, Mayor

By: _____
Carol Sacco, Village Clerk