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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2019 - 20

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AMENDING NOISE
CONTROL PROVISIONS OF THE CODE PREVIOUSLY
ADOPTED BY REFERENCE; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014; and

WHEREAS, the Charter of the Village of Estero (“Charter”) at Section 11, “General Provisions,” paragraph (5) “Transitional Ordinances and Resolutions,” provides that all applicable lawful Lee 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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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 revise certain provisions of the Lee County Code to specifically apply to the Village.

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

Section 1. Lee County Code Sections amended.

The following sections were included in the Code of Laws and Ordinances, of the Village of Estero, Florida by virtue of their inclusion in the Lee County Code and are hereby amended as ordinances of the Village of Estero. These amendments are not intended to affect the validity of these provisions as laws of Lee County.

Lee County Code Chapter 24 1/4 Noise Control, previously adopted by reference is amended to read as follows.

Sec. 24¹/₄-1. Short title and territorial scope.

This chapter will be known and cited as the "~~Lee County~~ Estero Noise Control Ordinance" and will be applicable in ~~all unincorporated Lee County~~ Estero.

Sec. 24¹/₄-2. Findings and purpose.

Words underlined are additions; Words ~~struck through~~ are deletions.

- 44 (a) ~~Lee County~~ Estero finds that excessive, loud and raucous noise degrades the
45 environment of the ~~county~~ village to a degree that:
- 46 (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - 47 (2) Interferes with the comfortable enjoyment of life and property;
 - 48 (3) Interferes with the well-being, tranquility, and privacy of the home; and
 - 49 (4) Can cause and aggravate health problems.
- 50 (b) Both effective control and the elimination of excessive, loud and raucous noise
51 are essential to the health, safety and welfare of the county's residents and visitors, and to the
52 conduct of normal pursuits of life, including, but not limited to, recreation, work,
53 communication, and rest.
- 54 (c) This chapter is enacted to protect, preserve, and promote the health, safety,
55 welfare, peace and quiet of the residents of ~~Lee County~~ Estero through the reduction, control,
56 and prevention of excessive, loud and raucous noises that unreasonably disturb, alarm, injure,
57 or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal
58 sensitivities.
- 59 (d) Nothing contained in this chapter is intended to infringe upon the
60 constitutionally protected rights guaranteed by Article I, Section 6 of the Florida Constitution
61 and the First Amendment of the United States Constitution. This chapter enacts narrowly
62 drawn, content-neutral regulations that are to be interpreted so as to not unduly restrict
63 constitutionally protected rights.

64

65 **Sec. 24¹/₄-3. Definitions.**

66

67 The words and phrases used in this chapter are defined as follows:

68

69 A-weighted level (dBA): The sound pressure level in decibels as measured using the
70 A-weighting network on a sound level meter. The unit of measurement is the dBA. Sound level
71 meter settings shall be for slow response.

72

73 Agricultural use: Land used primarily for farming, the raising of farm animals, and
74 nurseries.

75

76 Ambient noise: The all-encompassing noise associated with a given environment,
77 being usually a composite of sound from many sources near and far.

78

79 ~~Board: The Board of County Commissioners of Lee County, Florida.~~

80

81 Commercial use: Land used primarily for the sale of merchandise or goods, the
82 performance of a service, or for office or clerical work.

83

84 Continuous noise: A noise which remains essentially constant in level during the period
85 of observation.

86

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87 Decibel (dB): A division of a logarithmic scale used to express the ratio of two (2) like
88 quantities proportional to power or energy. The ratio is expressed in decibels by multiplying
89 its common logarithm by ten (10).

90
91 Emergency: An occurrence or set of circumstances involving actual, threatened or
92 imminent physical trauma or property damage which necessitates immediate action.

93
94 Emergency work: Any work performed for the purpose of preventing or alleviating the
95 physical trauma or property damage threatened or caused by an emergency, including
96 restoration work to return property to a safe condition following an emergency.

97
98 Impulsive sound: A sound of short duration, usually less than one (1) second, with an
99 abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and
100 drop forge impacts.

101
102 Industrial use: Land used primarily for manufacturing, processing and other industrial
103 uses.

104
105 Land: Earth, water and air above, below or on the surface, and includes any
106 improvements or structures customarily regarded as land.

107
108 Noise: Any sound which annoys or disturbs humans or causes or tends to cause an
109 adverse psychological effect on humans. "Noise" includes low frequency sounds caused by
110 amplified bass music that can result in vibration of structures or persons.

111
112 Noise disturbance: One (1) or a group of excessive, loud, harsh, raucous,
113 nonharmonious sounds or vibrations that unreasonably disturb, alarm, injure, harm or endanger
114 the health or welfare of a reasonable person with normal sensitivities.

115
116 Noise level: As referenced in this chapter, the noise level is the sound pressure level as
117 measured in dBA unless otherwise specified. A measurement of noise must be at least five (5)
118 dB above the ambient noise level.

119
120 Person: Any individual, natural person, public or private corporation, firm, association,
121 joint venture, partnership, or any other entity whatsoever or any combination of such, jointly
122 and severally.

123
124 Public space: Any real property or structure thereon normally accessible to the public
125 which is owned or controlled by a governmental entity.

126
127 Pure tone: Any sound which can be distinctly heard as a single pitch or a set of single
128 pitches. For the purposes of measurement, a pure tone shall exist if the one-third (1/3) octave
129 band sound pressure level in the band with the tone exceeds arithmetic value of the sound
130 pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dB for center

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131 frequencies of five hundred (500) Hz and above and by eight (8) dB for center frequencies
132 between one hundred sixty (160) and four hundred (400) Hz and by fifteen (15) dB for center
133 frequencies less than or equal to one hundred twenty-five (125) Hz.

134

135 Real property line: An imaginary line including its vertical extension which separates
136 the real property owned, rented or leased by one (1) person from that owned, rented or leased
137 by another person, excluding intra-building real property divisions except as otherwise
138 provided herein.

139 Receiving land: Land area neighboring or in the vicinity of a sound source and on or at
140 which the sound emanating from the sound source is audible to the normal ear and/or felt in
141 the form of vibration.

142

143 Residential use: Land use that is primarily for living and sleeping, parks, hospitals,
144 schools, institutional, nursing homes or the individual plots within a mobile home park or any
145 land use that is not commercial or industrial.

146

147 RMS sound pressure: The square root of the time averaged square of the sound
148 pressure, denoted Prms.

149

150 Lee County Sheriff's Office: The designated authority charged with administration and
151 enforcement of the Lee County Noise Control Ordinance.

152

153 Sound level: The weighted sound pressure level obtained by the use of a metering
154 characteristic and weighting A, B, or C as specified in the American National Standards
155 Institute specifications for sound level meters ANSI S1.4-1983, or successor publications. If
156 weighting employed is not indicated, the A-weighting shall apply.

157

158 Sound level meter: An instrument to measure the sound pressure level of relatively
159 continuous and broadband noises. The sound level meter used to determine compliance with
160 this chapter shall meet or exceed the requirements for type 2 sound level meter in accordance
161 with American National Standards Institute Standard S1.4-1983 or its successor publication.

162

163 Sound pressure level: Twenty (20) times the logarithm to the base 10 of the ratio of the
164 RMS sound pressure to the reference pressure of twenty (20) micropascals (20×10^{-6} N/m²).
165 The sound pressure level is denoted Lp or SPL and is expressed in decibels.

166

167 Sound source: The location from which the impermissible sound level or noise
168 disturbance is emanating.

169

170 **Sec. 24¹/₄-4. Noise disturbance prohibited.**

171

172 No person shall make, continue or cause to be made or continued any noise disturbance
173 in accordance with the terms set forth in this chapter.

174

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175 **Sec. 24¹/₄-5. Prohibited acts.**

176
177 The occurrence of the conditions, acts or omissions as described in either subsection
178 (a) or (b) of this section will constitute a violation of this chapter. Should a sound level
179 measurement method be unavailable, inappropriate for a given set of circumstances, or unable
180 to be taken by a sound level meter, subsection (b) of this section may be used to prove a
181 violation so long as evidence exists sufficient to establish that the sound constitutes a noise
182 disturbance pursuant to the standards provided in subsection (b) of this section.

183 (a) Maximum permissible sound levels by receiving land. No person shall operate
184 or cause to be operated any source of sound in such a manner as to create a sound level which
185 exceeds the limits set forth for the receiving land use category in Table 1 when measured at or
186 within the real property line of the receiving land.

187
188 Table 1

189
190 SOUND LEVELS BY RECEIVING LAND USE

191

192 Land Use Category	193 Time	194 Sound Level Limit dBA
195 Residential, public space, or agricultural	196 7:00 a.m. -10:00 p.m.	66
	197 10:00 p.m.— 7:00 a.m.	55
198 Commercial or business	199 7:00 a.m.—10:00 p.m.	72
	200 10:00 p.m.— 7:00 a.m.	65
201 Manufacturing or industrial	202 At all times	75

203 (1) Correction for character of sound.

204 a. For any source of sound which emits a pure tone, the maximum sound level
205 limits set forth in Table 1 shall be reduced by five (5) dBA.

206 b. For any source of impulsive sound which is of short duration with an abrupt
207 onset, the maximum sound level limits set forth in Table 1 shall be increased by ten (10) dBA
208 from 7:00 a.m. to 10:00 p.m.

209 (2) Establishment of use. In instances where an industrial or commercial use was
210 established prior to and in an area away from a residential use and encroachment of the
211 residential use has occurred resulting in the commercial or industrial use adjoining the
212 residential use, the sound level limit for the receiving residential use will be that of the
213 commercial or industrial use, whichever applicable, as set forth in Table 1 above.
214 Establishment of the commercial or industrial uses' existence before residential use
215 encroachment is an affirmative defense to a violation of this chapter.

216 (3) Specific restrictions. In addition to the general limits set out above in Table 1,
217 the following specific acts are declared to be in violation of this chapter:

218 a. Multifamily dwellings. In the case of multifamily dwelling units, it shall be
unlawful to create or permit to be created any noise that exceeds fifty (50) dBA during the
hours between 7:00 a.m. to 10:00 p.m. or forty-five (45) dBA during the hours between 10:00

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219 p.m. and 7:00 a.m. daily, as measured from the receiving dwelling unit within such multifamily
220 dwelling.

221 b. Construction noise. No person shall operate or permit to be operated any power-
222 driven construction equipment without a muffler or other noise-reduction device at least as
223 effective as that recommended by the manufacturer or provided as original equipment unless
224 the sound level emitted by the equipment is less than the sound level limit for the applicable
225 land use category set forth in Table 1 of this section, as measured from at or within the real
226 property line of the receiving land. Construction equipment that must be operated near a
227 residential use on a twenty-four-hour-per-day basis (i.e., pumps, well tips, generators, etc.) will
228 be shielded by a barrier to reduce the noise during the hours of 6:00 p.m. to 7:00 a.m. unless
229 the unshielded noise level is less than fifty-five (55) dBA, as measured from at or within the
230 real property line of any residential receiving land.

231 (4) Sound level measurement standards. The following standards must be followed
232 in measuring sound levels.

233 a. Calibration. All sound level meters must be calibrated and serviced in
234 accordance with the manufacturer's instructions.

235 b. Sound level meter operation. The sound level meter must be operated in
236 accordance with the manufacturer's instructions.

237 c. Measurement procedures. The following procedure must be used to determine
238 if a violation exists under this subsection:

239 1. The sound level meter must be located within the boundary of the receiving
240 land when taking the measurement.

241 2. The sound level meter must be oriented toward the source of the sound making
242 a direct line between the sound source and the sound level meter.

243 3. The sound level meter must be set for the A-weighted network and slow
244 response.

245 4. If possible, determine and record the ambient noise level during some point in
246 the observation. The A-weighted ambient noise level, including wind effects and noises other
247 than the sound source, must be at least five (5) dbA lower than the sound level of the sound
248 source for a violation of this chapter to exist.

249 (b) Noise disturbance. Notwithstanding any other provision herein, it shall be
250 unlawful for any person to make, continue, cause, or permit any noise disturbance.

251 (1) Standards. The standards to be considered in determining whether a noise
252 disturbance exists under this subsection include the following:

253 a. The volume of the noise, whether it is loud or quiet, and whether it can be
254 plainly heard from the receiving land.

255 b. The intensity of the noise.

256 c. Whether there is vibration associated with the noise.

257 d. The nature of the noise, i.e. raucous, unruly, harsh, etc.

258 e. The volume and intensity of the ambient noise, if any.

259 f. The proximity of the noise to residential sleeping facilities.

260 g. The nature and use of the area from which the noise source is located.

261 h. The nature and use of the receiving land.

262 i. The time of day or night the noise occurs.

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- 263 j. The duration of the noise.
264 k. Whether the noise is produced by a commercial or noncommercial activity.
265 (2) Consideration. Enforcement under subsection (b) of this section requires
266 consideration of all applicable standards listed in subsection (b)(1) and a determination as to
267 whether or not a noise disturbance exists by the sheriff's office personnel on the scene.
268 Determinations must be made from the receiving land, after locating the sound source, by the
269 sheriff's office personnel using his or her normal auditory senses, where applicable, without
270 the use of any hearing enhancement or hearing aid.

271

272 **Sec. 24¹/₄-6. Exceptions.**

273

274 The following will not be considered a violation of this chapter:

275 (a) The operation of warning or emergency signal devices such as sirens, horns and
276 bells when utilized for their intended purpose in cases of emergency.

277 (b) Noises resulting from equipment or operations incidental to the installation,
278 maintenance or repair of facilities or restoration of services, such as public utilities or other
279 emergency work in the public interest.

280 (c) Noise created by the operation of railways and shipping lanes.

281 (d) Noise created by the operation of all Lee County airports.

282 (e) Noise created by operation of equipment or conduct of activities normal to
283 residential or agricultural communities such as lawn care, soil cultivation, domestic power
284 tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers,
285 mosquito fogging, tree trimming and limb chipping and other normal community operations,
286 between the hours of 7:00 a.m. to 10:00 p.m., operation of equipment for solid waste and
287 recycling collection in or adjacent to residential uses between the hours of 6:00 a.m. and 6:00
288 p.m., and operation of equipment for solid waste collection in nonresidential locations between
289 the hours of 4:00 a.m. and 10:00 p.m.

290 (f) Noise resulting from safety features required by law for equipment or
291 operations, including, but not limited to, backup alarms or vehicle motion alarms.

292 (g) Noises associated with farm operations protected by the Florida Right to Farm
293 Act, F.S. § 823.14.

294 (h) Generators during or as a result of an emergency; or during non-emergencies
295 for maintenance operations in accordance with manufacturer's guidance and between the hours
296 of 10:00 a.m. and 5:00 p.m.

297

298 **Sec. 24¹/₄-7. Waivers.**

299

300 Applications for a waiver for relief from the maximum allowable noise level limits
301 designated in this chapter shall be made in writing. Such applications for waivers will be made
302 to the ~~county~~ village manager or designee ~~when the activity creating such noise is located~~
303 ~~within the unincorporated area of Lee County.~~ Any waiver granted by the ~~county~~ village
304 manager or designee must be provided to the applicant in writing within thirty (30) days of
305 application to the county and contain all conditions required for compliance with the waiver

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306 approval. The county manager or designee may grant the waiver under the following
307 conditions:

308 (a) The ~~county~~ village manager or designee in granting a waiver may prescribe any
309 reasonable conditions or requirements deemed necessary to minimize adverse effects upon the
310 community or the surrounding neighborhood.

311 (b) Waivers from maximum allowable noise level limits may be granted for noises
312 created within an industrial or commercial use area by operations which were in existence on
313 or before April 29, 1993.

314 (x) Waivers may be issued for no longer than one hundred eighty (180) days,
315 renewable by further application to the county manager or designee.

316 Any applicant aggrieved by the county manager's or designee's decision under this
317 section, may appeal to the ~~Lee County~~ Estero Hearing Examiner within thirty (30) days from
318 the date of written decision on the waiver.

319

320 **Sec. 24 $\frac{1}{4}$ -8. Enforcement.**

321

322 The Lee County Sheriff's Office is empowered to investigate any situation where a
323 person is alleged to be violating this chapter. If an officer encounters a circumstance which
324 reasonably indicates that a person is violating this chapter, the officer will conduct either a
325 sound level measurement test or noise disturbance determination in accordance with section
326 24 $\frac{1}{4}$ -4 of this chapter to determine whether or not a violation of this Chapter exists. Nothing
327 in this chapter shall prohibit the Lee County Sheriff's Office from charging persons responsible
328 for acts which affect the peace and quiet of persons who may witness them for breach of the
329 peace or disorderly conduct under F.S. § 877.03, as may be amended from time to time.

330

331 **Sec. 24 $\frac{1}{4}$ -9. Penalties.**

332

333 Any person or persons, firm or corporation or any agent thereof who violates any of
334 the provision of this chapter will, upon conviction, be guilty of a second degree misdemeanor
335 and subject to a fine not exceeding the sum of five hundred dollars (\$500.00) or imprisonment
336 in the county jail for a period not exceeding sixty (60) days, or by both fine and imprisonment.
337 Each separate occurrence of a violation of this chapter will constitute a separate offence and
338 will be punishable as such hereunder.

339

340 **Sec. 24 $\frac{1}{4}$ -10. Civil remedies.**

341 In addition to the criminal penalties provided in section 24 $\frac{1}{4}$ -9 of this chapter, the ~~board~~
342 ~~of county commissioners~~ village council is hereby authorized to institute any appropriate
343 action or proceeding including suit for injunctive relief in order to prevent or abate violations
344 of this chapter.

345 **Sec. 24 $\frac{1}{4}$ -11. Rules and regulations.**

346

347 The ~~board~~ council is authorized and empowered to adopt and promulgate, by
348 administrative code, such reasonable rules and regulations as may be necessary to carry out
349 and enforce the purposes of this chapter.

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350 **Sec. 24¼-12. Conflicts of law.**

351

352 Whenever the requirements or provisions of this chapter are in conflict with the
353 requirements or provisions of any other lawfully adopted ordinance or statute, the most
354 restrictive requirements will apply.

355

356 **Section 2. Effective Date.**

357

358 This ordinance shall become effective immediately upon adoption.

359

360 **PASSED** on first reading this 10th day of July, 2019.

361

362 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
363 Florida this 2nd day of October, 2019.

364

Attest:

VILLAGE OF ESTERO, FLORIDA

365

366

367 By: _____
368 Kathy Hall, MMC, Village Clerk

By: _____
Bill Ribble, Mayor

369

370

371 Reviewed for legal sufficiency:

372

373

374 By: _____
375 Burt Saunders, Esq., Village Attorney

376

377 Vote: AYE NAY

378 Mayor Ribble _____ _____

379 Vice Mayor Errington _____ _____

380 Councilmember Batos _____ _____

381 Councilmember Boesch _____ _____

382 Councilmember Levitan _____ _____

383 Councilmember McLain _____ _____

384 Councilmember Wilson _____ _____

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