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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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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. 24<sup>1</sup>/<sub>4</sub>-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.

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

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**Sec. 24¼-2. Findings and purpose.**

(a) ~~Lee County~~ Estero finds that excessive, loud and raucous noise degrades the environment of the ~~county~~ village to a degree that:

- (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
- (2) Interferes with the comfortable enjoyment of life and property;
- (3) Interferes with the well-being, tranquility, and privacy of the home; and
- (4) Can cause and aggravate health problems.

(b) Both effective control and the elimination of excessive, loud and raucous noise are essential to the health, safety and welfare of the county's residents and visitors, and to the conduct of normal pursuits of life, including, but not limited to, recreation, work, communication, and rest.

(c) This chapter is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of ~~Lee County~~ Estero through the reduction, control, and prevention of excessive, loud and raucous noises that unreasonably disturb, alarm, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal sensitivities.

(d) Nothing contained in this chapter is intended to infringe upon the constitutionally protected rights guaranteed by Article I, Section 6 of the Florida Constitution and the First Amendment of the United States Constitution. This chapter enacts narrowly drawn, content-neutral regulations that are to be interpreted so as to not unduly restrict constitutionally protected rights.

**Sec. 24¼-3. Definitions.**

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

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

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

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

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

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

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

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

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

93  
94 Emergency: An occurrence or set of circumstances involving actual, threatened or  
95 imminent physical trauma or property damage which necessitates immediate action.

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

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

104  
105 Industrial use: Land used primarily for manufacturing, processing and other industrial  
106 uses.

107  
108 Land: Earth, water and air above, below or on the surface, and includes any  
109 improvements or structures customarily regarded as land.

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

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

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

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

126  
127 Public space: Any real property or structure thereon normally accessible to the public  
128 which is owned or controlled by a governmental entity.

129  
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130 Pure tone: Any sound which can be distinctly heard as a single pitch or a set of single  
131 pitches. For the purposes of measurement, a pure tone shall exist if the one-third (1/3) octave  
132 band sound pressure level in the band with the tone exceeds arithmetic value of the sound  
133 pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dB for center  
134 frequencies of five hundred (500) Hz and above and by eight (8) dB for center frequencies  
135 between one hundred sixty (160) and four hundred (400) Hz and by fifteen (15) dB for center  
136 frequencies less than or equal to one hundred twenty-five (125) Hz.

137

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

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

145

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

149

150 RMS sound pressure: The square root of the time averaged square of the sound  
151 pressure, denoted Prms.

152

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

155

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

160

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

165

166 Sound pressure level: Twenty (20) times the logarithm to the base 10 of the ratio of the  
167 RMS sound pressure to the reference pressure of twenty (20) micropascals ( $20 \times 10^{-6}$  N/m<sup>2</sup>).  
168 The sound pressure level is denoted Lp or SPL and is expressed in decibels.

169

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

172

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

173 **Sec. 24¼-4. Noise disturbance prohibited.**

174  
175 No person shall make, continue or cause to be made or continued any noise disturbance  
176 in accordance with the terms set forth in this chapter.

177  
178 **Sec. 24¼-5. Prohibited acts.**

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

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

190  
191 Table 1

192  
193 SOUND LEVELS BY RECEIVING LAND USE

194

195 Land Use Category	196 Time	197 Sound Level Limit dBA
198 Residential, public space, or agricultural	199 7:00 a.m. -10:00 p.m.	200 66
	201 10:00 p.m.— 7:00 a.m.	202 55
203 Commercial or business	204 7:00 a.m.—10:00 p.m.	205 72
	206 10:00 p.m.— 7:00 a.m.	207 65
208 Manufacturing or industrial	209 At all times	210 75

211 (1) Correction for character of sound.

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

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

(2) Establishment of use. In instances where an industrial or commercial use was  
established prior to and in an area away from a residential use and encroachment of the  
residential use has occurred resulting in the commercial or industrial use adjoining the  
residential use, the sound level limit for the receiving residential use will be that of the  
commercial or industrial use, whichever applicable, as set forth in Table 1 above.

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215 Establishment of the commercial or industrial uses' existence before residential use  
216 encroachment is an affirmative defense to a violation of this chapter.

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

219 a. Multifamily dwellings. In the case of multifamily dwelling units, it shall be  
220 unlawful to create or permit to be created any noise that exceeds fifty (50) dBA during the  
221 hours between 7:00 a.m. to 10:00 p.m. or forty-five (45) dBA during the hours between 10:00  
222 p.m. and 7:00 a.m. daily, as measured from the receiving dwelling unit within such multifamily  
223 dwelling.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 258           b.     The intensity of the noise.  
259           c.     Whether there is vibration associated with the noise.  
260           d.     The nature of the noise, i.e. raucous, unruly, harsh, etc.  
261           e.     The volume and intensity of the ambient noise, if any.  
262           f.     The proximity of the noise to residential sleeping facilities.  
263           g.     The nature and use of the area from which the noise source is located.  
264           h.     The nature and use of the receiving land.  
265           i.     The time of day or night the noise occurs.  
266           j.     The duration of the noise.  
267           k.     Whether the noise is produced by a commercial or noncommercial activity.

268           (2)    Consideration. Enforcement under subsection (b) of this section requires  
269 consideration of all applicable standards listed in subsection (b)(1) and a determination as to  
270 whether or not a noise disturbance exists by the sheriff's office personnel on the scene.  
271 Determinations must be made from the receiving land, after locating the sound source, by the  
272 sheriff's office personnel using his or her normal auditory senses, where applicable, without  
273 the use of any hearing enhancement or hearing aid.  
274

275   **Sec. 24¼-6.    Exceptions.**

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

277           (a)    The operation of warning or emergency signal devices such as sirens, horns and  
278 bells when utilized for their intended purpose in cases of emergency.  
279

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

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

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

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

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

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

297           (h)    Generators during or as a result of an emergency; or during non-emergencies  
298 for maintenance operations in accordance with manufacturers' guidance and between the hours  
299 of 10:00 a.m. and 5:00 p.m.  
300

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

301 **Sec. 24¼-7. Waivers.**

302

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

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

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

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

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

322

323 **Sec. 24¼-8. Enforcement.**

324

325 The Lee County Sheriff's Office is empowered to investigate any situation where a  
326 person is alleged to be violating this chapter. If an officer encounters a circumstance which  
327 reasonably indicates that a person is violating this chapter, the officer will conduct either a  
328 sound level measurement test or noise disturbance determination in accordance with section  
329 24¼-4 of this chapter to determine whether or not a violation of this Chapter exists. Nothing  
330 in this chapter shall prohibit the Lee County Sheriff's Office from charging persons responsible  
331 for acts which affect the peace and quiet of persons who may witness them for breach of the  
332 peace or disorderly conduct under F.S. § 877.03, as may be amended from time to time.

333

334 **Sec. 24¼-9. Penalties.**

335

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

342

343

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



344           **Sec. 24¼-10.    Civil remedies.**

345

346           In addition to the criminal penalties provided in section 24¼-9 of this chapter, the ~~board~~  
347 ~~of county commissioners~~ village council is hereby authorized to institute any appropriate  
348 action or proceeding including suit for injunctive relief in order to prevent or abate violations  
349 of this chapter.

350

351           **Sec. 24¼-11.    Rules and regulations.**

352

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

356

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

358

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

362

363           **Section 2.     Effective Date.**

364

365           This ordinance shall become effective immediately upon adoption.

366

367           **PASSED** on first reading this 10<sup>th</sup> day of July, 2019.

368

369           **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,  
370 Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

371

372    Attest:

**VILLAGE OF ESTERO, FLORIDA**

373

374

375    By: \_\_\_\_\_

By: \_\_\_\_\_

376       Kathy Hall, MMC, Village Clerk

Bill Ribble, Mayor

377

378

379    Reviewed for legal sufficiency:

380

381

382    By: \_\_\_\_\_

383       Burt Saunders, Esq., Village Attorney

384

385

386

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	Vote:	AYE	NAY
387	Vote:		
388	Mayor Ribble	_____	_____
389	Vice Mayor Errington	_____	_____
390	Councilmember Batos	_____	_____
391	Councilmember Boesch	_____	_____
392	Councilmember Levitan	_____	_____
393	Councilmember McLain	_____	_____
394	Councilmember Wilson	_____	_____

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