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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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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. 24¼-1. Short title and territorial scope.**

This chapter will be known and cited as the "Estero Noise Control Ordinance" and will be applicable in Estero.

**Sec. 24¼-2. Findings and purpose.**

(a) Estero finds that excessive, loud and raucous noise degrades the environment of the 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RMS sound pressure: The square root of the time averaged square of the sound pressure, denoted  $P_{rms}$ .

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

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

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

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

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

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

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

#### **Sec. 24¼-5. Prohibited acts.**

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



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

Table 1

SOUND LEVELS BY RECEIVING LAND USE

Land Use Category	Time	Sound Level Limit dBA
Residential, public space, or agricultural	7:00 a.m. - 10:00 p.m.	66
	10:00 p.m. - 7:00 a.m.	55
Commercial or business	7:00 a.m. - 10:00 p.m.	72
	10:00 p.m. - 7:00 a.m.	65
Manufacturing or industrial	At all times	75

(1) Correction for character of sound.

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

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

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

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

b. Construction noise. No person shall operate or permit to be operated any power-driven construction equipment without a muffler or other noise-reduction device at least as effective as that recommended by the manufacturer or provided as original equipment unless the sound level emitted by the equipment is less than the sound level limit for the applicable land use category set forth in Table 1 of this section, as measured from at or within the real property line of the receiving land. Construction equipment that must be operated near a residential use on a twenty-four-hour-per-day basis (i.e., pumps, well tips, generators, etc.) will

225 be shielded by a barrier to reduce the noise during the hours of 6:00 p.m. to 7:00 a.m. unless  
226 the unshielded noise level is less than fifty-five (55) dBA, as measured from at or within the  
227 real property line of any residential receiving land.

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

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

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

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

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

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

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

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

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

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

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

252 b. The intensity of the noise.

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

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

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

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

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

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

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

260 j. The duration of the noise.

261 k. Whether the noise is produced by a commercial or noncommercial activity.

262 (2) Consideration. Enforcement under subsection (b) of this section requires  
263 consideration of all applicable standards listed in subsection (b)(1) and a determination as to  
264 whether or not a noise disturbance exists by the sheriff's office personnel on the scene.  
265 Determinations must be made from the receiving land, after locating the sound source, by the  
266 sheriff's office personnel using his or her normal auditory senses, where applicable, without  
267 the use of any hearing enhancement or hearing aid.  
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270 **Sec. 24¼-6. Exceptions.**

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

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

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

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

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

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

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

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

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

295  
296 **Sec. 24¼-7. Waivers.**

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298 Applications for a waiver for relief from the maximum allowable noise level limits  
299 designated in this chapter shall be made in writing. Such applications for waivers will be made  
300 to the village manager or designee. Any waiver granted by the village manager or designee  
301 must be provided to the applicant in writing within thirty (30) days of application to the county  
302 and contain all conditions required for compliance with the waiver approval. The county  
303 manager or designee may grant the waiver under the following conditions:

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

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

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

312 Any applicant aggrieved by the county manager's or designee's decision under this  
313 section, may appeal to the Estero Hearing Examiner within thirty (30) days from the date of  
314 written decision on the waiver.

315           **Sec. 24¼-8.    Enforcement.**

316  
317           The Lee County Sheriff's Office is empowered to investigate any situation where a  
318 person is alleged to be violating this chapter. If an officer encounters a circumstance which  
319 reasonably indicates that a person is violating this chapter, the officer will conduct either a  
320 sound level measurement test or noise disturbance determination in accordance with section  
321 24¼-4 of this chapter to determine whether or not a violation of this Chapter exists. Nothing  
322 in this chapter shall prohibit the Lee County Sheriff's Office from charging persons responsible  
323 for acts which affect the peace and quiet of persons who may witness them for breach of the  
324 peace or disorderly conduct under F.S. § 877.03, as may be amended from time to time.

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326           **Sec. 24¼-9.    Penalties.**

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

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

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337           In addition to the criminal penalties provided in section 24¼-9 of this chapter, the  
338 village council is hereby authorized to institute any appropriate action or proceeding including  
339 suit for injunctive relief in order to prevent or abate violations of this chapter.

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

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343           The council is authorized and empowered to adopt and promulgate, by administrative  
344 code, such reasonable rules and regulations as may be necessary to carry out and enforce the  
345 purposes of this chapter.

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

348  
349           Whenever the requirements or provisions of this chapter are in conflict with the  
350 requirements or provisions of any other lawfully adopted ordinance or statute, the most  
351 restrictive requirements will apply.

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353           **Section 2.       Effective Date.**

354  
355           This ordinance shall become effective immediately upon adoption.

356  
357           **PASSED** on first reading this 10<sup>th</sup> day of July, 2019.



359 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,  
360 Florida this 2<sup>nd</sup> day of October, 2019.

361  
362 Attest:

**VILLAGE OF ESTERO, FLORIDA**

363  
364  
365 By: Kathy Hall  
366 Kathy Hall, MMC, Village Clerk

By: Bill Ribble  
Bill Ribble, Mayor

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368  
369 Reviewed for legal sufficiency:

370  
371  
372 By: Derek Rooney  
373 Derek Rooney, Esq., Assistant Village Attorney

374	Vote:	AYE	NAY
375	Mayor Ribble	<u>✓</u>	<u>   </u>
376	Vice Mayor Errington	<u>✓</u>	<u>   </u>
377	Councilmember Batos	<u>✓</u>	<u>   </u>
378	Councilmember Boesch	<u>✓</u>	<u>   </u>
379	Councilmember Boesch	<u>✓</u>	<u>   </u>
380	Councilmember Levitan	<u>✓</u>	<u>   </u>
381	Councilmember McLain	<u>✓</u>	<u>   </u>
382	Councilmember Wilson	<u>✓</u>	<u>   </u>