

ORDINANCE 29 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS," ARTICLE II, "OFFENSES CREATING NUISANCES," BY REPEALING AND REPLACING SECTION 12-22, "NOISE CONTROL," PROVIDING FOR SHORT TITLE; PROVIDING FOR FINDINGS AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITIONS OF UNREASONABLY EXCESSIVE NOISE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR WAIVERS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, Constitution of the state of Florida, and Chapter 166, Florida Statutes, the Cape Coral City Council ("Council") is authorized to adopt ordinances, except as otherwise provided by law; and

WHEREAS, Article II, Section 7, Constitution of the state of Florida, provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise; and

WHEREAS, the Council finds that unreasonably excessive noise is a serious threat to the public health, safety, and welfare and negatively affects the quality of life of the community; and

WHEREAS, the Council has determined a need to more effectively control and abate unreasonably excessive noise in the City; and

WHEREAS, the Florida Supreme Court has held that the "plainly audible" standard is not unconstitutionally vague and is a valid tool to regulate excessive noise. *State v. Catalano*, 104 So.3d 1069 (Fla. 2012); and

WHEREAS, the United States Supreme Court has held that it is a permissible exercise of legislative discretion to regulate noise amplified to a "loud and raucous" volume. *Kovacs v. Cooper*, 336 U.S. 77 (1949); and

WHEREAS, it is not the intent of this ordinance to interfere with the individual rights to freedom of speech; and

WHEREAS, the Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-22, is hereby repealed in its entirety and replaced with the following:

**§ 12-22 Noise Control.**

- (a) Short title. This section may be known and cited as the "Cape Coral Noise Control Ordinance."
- (b) Findings and purpose.
  - (1) The Cape Coral City Council finds that unreasonably excessive noise degrades the environment of the City to a degree that such noise:
    - a. Is harmful to the health, safety, and welfare of City residents and visitors;
    - b. Interferes with the comfortable enjoyment of life and property;
    - c. Interferes with the well-being, tranquility, and privacy of one's home;  
and
    - d. Can cause and aggravate health problems.
  - (2) The effective control of unreasonably excessive noise is essential to the health, safety, and welfare of City residents and visitors, and fosters the comfortable

enjoyment of life, including, but not limited to, recreation, work, communication, and rest.

(3) This section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of residents and visitors of the City of Cape Coral through the control, reduction, and prevention of unreasonably excessive noises that unreasonably disturb, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivities.

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

(c) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Amplified sound** means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means.

**A-weighted sound level** means the sound pressure level in decibels as measured with a sound level meter using the A-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dBA.

**C-weighted sound level** means the sound pressure level in decibels as measured with a sound level meter using the C-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dBC.

**Decibel (dB)** means a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

**Emergency** means any occurrence, or set of circumstances, involving actual, threatened, or imminent physical trauma or injury, natural resource damage, or property damage which demands immediate action.

**L<sub>eq</sub> (equivalent sound pressure level)** means the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying sound.

**Officer** means any designated employee or agent of the City of Cape Coral whose duty it is to enforce codes and ordinances enacted by the city and may include, but shall not be limited to, law enforcement officers and code enforcement officers.

**Person(s)** means, but is not limited to, any individual, natural person, firm, partnership, joint venture, syndicate or other group, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, or any other entity whatsoever, or any combination of such, jointly and severally.

**Person(s) responsible** means, but is not limited to, any person who has any manner of control over a property, premises, dwelling, structure, location, business, vehicle, device, stereo, or source of sound and may include, but is not limited to, any property owner, tenant, subtenant, business owner, resident, operator or person having operational control, person(s) creating or controlling the volume of sound, manager of a commercial property, or person(s) in charge or otherwise authorized to make decisions regarding the use of sound equipment, or any combination of such, jointly and severally.

**Plainly audible** means any sound that can be clearly heard by a reasonable person using such person's ordinary auditory senses, so long as the person's hearing is not enhanced by any device, such as a hearing aid. The person need not determine the particular words or phrases being produced or the name of any song or artist producing the sound for the sound to be considered plainly audible. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

**Property** means any private property, public property, or public right-of-way and includes the air space above.

**Property line** means either (i) an imaginary line along the ground surface, and its vertical plane extension, which separates the real property owned, rented, or leased by a person(s) or entity from that real property owned, rented or leased by another person(s) or entity, or (ii) the vertical and horizontal boundaries of a residential dwelling unit that is contained in a building containing two or more residential units or any combination of separately leased or owned spaces.

**Receiving property** means at or within the property line which is receiving sound from another property, but does not include public rights-of-way.

**Sound level** means a sound pressure level obtained using a signal to which standard weighting has been applied.

(d) **Prohibition of unreasonably excessive noise from a property – Entertainment area.** It shall be unlawful for any person(s), including the property owner(s), to permit, cause, allow, create, emit, or sustain unreasonably excessive noise from a property, including air space thereof, located in the City of Cape Coral and within the below described Entertainment area.

(1) For purposes of this Subsection (d), the following additional definitions apply:

**Entertainment area** mean any property located in:

a. The area bounded by SE 46<sup>th</sup> Lane to the north, Coronado Parkway to the west, Miramar Street and Cape Coral Street to the south, and Del Prado Boulevard to the east. Area includes Tract C, Unit 6 Part 3 of the Cape Coral Subdivision.

**Unreasonably excessive noise from a property** means sound from any property within the Entertainment area, which meets or exceeds the following maximum sound levels:

a. Seventy-five (75) dBA or seventy-seven (77) dBC between the hours of 7:00 a.m. and 11:00 p.m.  
b. Sixty-five (65) dBA or Sixty-seven (67) dBC between the hours of 11:00 p.m. and 7:00 a.m.

(2) **Determining dBA or dBC under this Subsection (d).** In determining the dBA or dBC sound level under this subsection, a measurement shall be taken from the property line of the property generating the sound, or from the individual lease boundary of the property generating the sound in the case of property which has been subdivided by the execution of individual leases. The equivalent ( $L_{eq}$ ) decibel measurement taken at thirty (30) seconds shall not exceed the maximum sound levels set above.

(3) **Sound level measurement standards.** All sound level meters used to enforce the provisions of this Subsection (d) shall be calibrated and serviced in accordance with the manufacturer's instructions. All sound level meters used to enforce the provisions of this Subsection (d) shall be operated in accordance with the manufacturer's instructions.

(4) **Notwithstanding any provision to the contrary in this Subsection (d), amplified sound is prohibited outside of a fully enclosed building in the Entertainment area between the hours of 11:00 p.m. and 7:00 a.m., unless the sound is associated with a special event for which a permit has been obtained from the City. For purposes of this Subsection (d), a fully enclosed building shall mean any portion of a roofed structure that is intended to be impervious to weather and is contained on all sides by walls and doors and windows that remain closed at all times, except for temporary ingress and egress.**

(e) **Prohibition of unreasonably excessive noise from a property - All other areas.** It shall be unlawful for any person(s), including the property owner(s), to permit, cause, allow, create,

emit, or sustain unreasonably excessive noise from a property, including air space thereof, located in the City of Cape Coral and not within the Entertainment area described in Subsection (d) above.

(1) For purposes of this Subsection (e), the following additional definitions apply:

*Unreasonably excessive noise from a property* means sound from any property not located within the Entertainment area described in Subsection (d) above, which is unreasonably loud and raucous as defined below.

*Unreasonably loud and raucous* means any sound that, because of its volume level or duration, jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities.

(2) *Violation at any time.* An officer may issue a civil citation or notice of violation, after warning, for unreasonably excessive noise from a property if the officer has probable cause to believe the noise is unreasonably loud and raucous after considering the following:

- a. Whether the sound is plainly audible within a fully enclosed structure or residence located on the property of a person making a complaint;
- b. Whether the sound is causing vibration, rattles, thumping, or pulsating within a fully enclosed structure or residence located on the property of a person making a complaint;
- c. Whether the duration of the sound jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities; and
- d. Whether the sound is recurrent, intermittent, or continuous in a manner that jars, injures, or endangers the health, safety, welfare, or wellbeing of a reasonable individual of ordinary sensibilities.

(3) *Violation based upon sworn complaint.* An officer may issue a civil citation or notice of violation, after warning, upon receiving a sworn complaint from a person for unreasonably excessive noise from a property, if the officer has probable cause to believe the noise is unreasonably loud and raucous based on the sworn complaint and after considering the following:

- a. The time of day a complaint about unreasonably excessive noise occurs;
- b. The duration of the sound;
- c. The number and history of relevant complaints from the same residence or structure;
- d. The distance from the source of the sound;
- e. The number of person(s) affected by the sound;
- f. The proximity of the sound to residential sleeping facilities;
- g. The ability of a witness to hear the sound and testify about the complaint;
- h. The corroboration by sworn statement(s) of witness(es) to the sound other than, and in addition to, the primary affiant;
- i. The availability of audio/video recording of the sound;
- j. The totality of circumstances, including the factors delineated in Subsection (e)(2)a.-d.; and
- k. Whether the sound is a listed exemption pursuant to Subsection (g) below.

(4) *Prima facie evidence.* For the purposes of this Subsection (e), the following shall constitute prima facie evidence that a sound (whether recurrent, intermittent, or continuous) is unreasonably loud and raucous if:

- a. Between the hours of 11:00 p.m. and 7:00 a.m., the sound is plainly audible a minimum of one hundred (100) feet from the property line of the source of the sound at or within a fully enclosed structure or residence on any receiving property; or
  - b. The sound meets or exceeds seventy-three (73) dBA or seventy-five (75) dBC between the hours of 7:00 a.m. and 11:00 p.m., or sixty-five (65) dBA or sixty-seven (67) dBC between the hours of 11:00 p.m. and 7:00 a.m. Sound level measurements shall be obtained in accordance with the provisions of Subsections (d)(2) and (d)(3).
- (5) Notwithstanding any provision to the contrary in this Subsection (e), amplified sound is prohibited outside of a fully enclosed building between the hours of 11:00 p.m. and 7:00 a.m., unless the sound is associated with a special event for which a permit has been obtained from the City. For purposes of this Subsection (e), a fully enclosed building shall mean any portion of a roofed structure that is intended to be impervious to weather and is contained on all sides by walls and doors and windows that remain closed at all times, except for temporary ingress and egress.
- (f) Prohibition of unreasonably excessive noise from a vehicle. It shall be unlawful for any person(s) in control of a vehicle to permit, cause, allow, create, emit, or sustain unreasonably excessive noise from a vehicle that is plainly audible from such vehicle in the City of Cape Coral.
- (1) For purposes of this Subsection (f), the following additional definitions apply:
- Unreasonably excessive noise from a vehicle** means sound from any vehicle which is plainly audible at a distance of fifty (50) feet or more from the vehicle at the time it is heard.
- Vehicle** means any device or structure used for transporting any person(s) or thing(s) that is propelled by mechanized power, human power, or some combination of mechanized power and human power.
- (g) Exemptions. The provisions of this section shall not apply to:
- (1) The operation of warning or emergency signal devices such as sirens, horns, alarms, and bells, when utilized for their intended purpose in cases of emergency.
  - (2) Sounds resulting from equipment or operations incidental to the installation, maintenance, or repair of facilities or restoration of services, such as public utilities work or other emergency work in the public interest.
  - (3) The operation of equipment or conduction of activities common to residential or agricultural communities, including, but not limited to, lawn care; soil cultivation; lawn mowers; maintenance of trees, shrubs, hedges, and gardens; tree trimming; limb chipping; domestic power tools; saws and tractors; street sweepers; mosquito fogging; and other community operations, between the hours of 7:00 a.m. to 10:00 p.m.
  - (4) The operation of equipment or conduction of activities for city approved refuse and recyclable waste collection, between the hours of 6:00 a.m. to 8:00 p.m.
  - (5) Construction activities between 7:00 a.m. and 7:00 p.m. Monday through Saturday, except New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas, for which building permits have been issued, or for construction activities not requiring permits due to the scope of work or ownership of the project by a governmental agency; provided all equipment is operated in accordance with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers, and noise-reducing equipment in use and in good operating condition.
  - (6) Unamplified human voice(s).
  - (7) Sounds emanating from bona fide farm operations on land classified as agricultural land, which is exempt from local regulation pursuant to Section 823.14, Florida Statutes, as may be amended.

- (8) Residential air conditioners and residential swimming pool equipment.
  - (9) Sounds made by dogs, birds, and other animals, which are regulated by Lee County Domestic Animal Services. Animal regulations are located in Chapter 6, Lee County Code of Ordinances.
  - (10) Activities in the fields, grounds, or facilities of any schools, sporting arena, stadium, or sports complex to which the public or community has access.
  - (11) Sounds generated from any event, when a permit has been obtained from the City of Cape Coral prior to such event, and such sounds are in compliance with any conditions imposed by that permit. This provision shall include, but not be limited to, any parade, road festival, or special event.
- (h) Waivers. The City Council may vote to temporarily suspend or modify any and all of the prohibitions contained in this Section 12-22 when it finds that emergency circumstances, including, but not limited to those resulting from hurricane(s) or other natural disaster(s), exist.
- (i) Enforcement and penalties. The authority to enforce the provisions of this section shall be vested in the Cape Coral Police Department and the Department of Community Development. Nothing in this section shall prohibit the Police Department from charging persons responsible for acts, which affect the peace and quiet of other persons, for breach of the peace or disorderly conduct under Section 877.03, Florida Statutes, as may be amended from time to time. This section shall be enforced by an officer as follows:
- (1) Any person(s) responsible for a violation of Subsections (d) or (e) herein shall be given notice of an unreasonably excessive noise violation and warned that a civil citation or notice of violation will be issued if the person(s) responsible fails to bring the sound level into compliance within five (5) minutes; and fails to remain in compliance for forty-eight (48) hours. The notice and warning may be given verbally or in writing informing the person(s) responsible for a purported excessive noise violation generally as follows:

**You are being notified that you are in violation of the City of Cape Coral's Noise Control Ordinance. You are being given a five (5) minute warning to bring the sound level into compliance with Section 12-22 of the City Code of Ordinances. The failure to timely bring the sound level into compliance is a violation of the City of Cape Coral's Noise Control Ordinance.**

The officer may issue a civil citation or notice of violation to any person(s) responsible who does not timely bring the sound level into compliance.
  - (2) Any person(s) responsible for a violation of Subsection (f) herein, which violations are considered irreparable and irreversible in nature, may be immediately issued a civil citation or notice of violation by an officer.
  - (3) Any person(s), including the property owner(s), who violates any of the provisions of this section shall be subject to a civil penalty in the amount of \$150.00 for a first violation, and \$500.00 for any subsequent violation occurring within one (1) year after a finding of violation of the previous offense or a plea of no contest. Each violation of this section shall constitute a separate and distinct offense for which a civil citation or notice of violation may be issued.
  - (4) Joint and several responsibility. Any person(s) responsible for unreasonably excessive noise from a property or from a vehicle, as defined herein, may be liable for the violation under this section. More than one person may be found to be responsible for the violation.
  - (5) Unreasonably excessive noise is declared a public nuisance. The prosecution of an offense under this section does not limit the City's right to abate the public nuisance, or from seeking injunctive relief, by any means provided by law. The City Attorney or designee(s) may bring suit on behalf of the City against the person(s) responsible for causing, maintaining, permitting, or

allowing a public nuisance under this section. This section shall not prohibit or otherwise restrict any person(s) from bringing suit against a public nuisance for unreasonably excessive noise. Relief may be granted according to the terms and conditions of Section 60.05, Florida Statutes, or any other means provided by law.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 9<sup>th</sup> DAY OF December, 2019.

  
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JOE COVIELLO, MAYOR

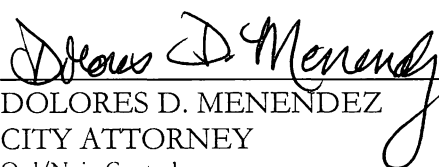
VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	<u>AYE</u>	NELSON	<u>AYE</u>
GUNTER	<u>AYE</u>	WELSH	<u>excused</u>
CARIOSCIA	<u>NAY</u>	WILLIAMS	<u>AYE</u>
STOUT	<u>AYE</u>	COSDEN	<u>NAY</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 18<sup>th</sup> DAY OF December, 2019.

  
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KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
Ord/NoiseControl  
12/9/19