

Mayor

Joe Coviello

Council Members

District 1: John Gunter

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Jennifer I. Nelson

District 5: Vacant

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.
Cape Coral, FL

City Manager

John Szerlag

City Attorney

Dolores Menendez

City Auditor

Andrea R. Butola

City Clerk

Kimberly Bruns

AGENDA
COMMITTEE OF THE WHOLE

September 23, 2019

4:30 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

VIDEO

1. MEETING CALLED TO ORDER

A. MAYOR COVIELLO

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA,
COSDEN, GUNTER, NELSON, STOUT, WILLIAMS

4. BUSINESS:

A. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters
concerning the City Government; 3 minutes per individual.

B. DISCUSSION

- (1) Discussion: Proposed Noise Ordinance 29-19
- (2) Procurement Ordinance

5. ROUND TABLE DISCUSSION

6. TIME AND PLACE OF FUTURE MEETINGS

A. A Regular Meeting of the Cape Coral City Council is Scheduled for

7. MOTION TO ADJOURN

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary.

All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS DEPARTMENT OF COMMUNITY DEVELOPMENT CASES**

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then

members of the public.

3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Item Number: B.(1)
Meeting Date: 9/23/2019
Item Type: DISCUSSION

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Discussion: Proposed Noise Ordinance 29-19

REQUESTED ACTION:

Informational

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

Planning & Zoning/Staff Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

1. On July 22, 2019, City Council discussed Ordinance 29-19 which would amend 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 enforcement and penalties.
2. During the discussion, there were questions regarding the "Entertainment District" and how violations would be enforced.
3. There was discussion on the methodology of measuring decibel readings within the "Entertainment District" from the property line of the affected establishment, the hours associated with it, and residential zoning within the "Entertainment District."
4. There was discussion to look at Fort Myers noise ordinance regarding their regulations.

LEGAL REVIEW:

EXHIBITS:

1. Staff Presentation
2. Ordinance 29-19

PREPARED BY:

Martha
LaForest Division- Administration Department- Police

SOURCE OF ADDITIONAL INFORMATION:

David Newlan, Chief of Police

ATTACHMENTS:

Description	Type
▣ Staff Presentation	Backup Material
▣ Ordinance 29-19	Backup Material

PROPOSED NOISE ORDINANCE 29-19

CITY OF CAPE CORAL NOISE ORDINANCE

Current Noise Ordinance

- Conditions that require decibel readings are unclear and subject to interpretation.
- Does not specifically address certain types of noise which created enforcement concerns, such as noise from motor vehicles.
- Certain parts of the Ordinance make it hard to enforce based on certain conditions where it describes a type of noise as a possible infraction, in correlation with the specified decibel reading.
- Not practical in some areas of the City due to the proximity of the different zoning areas.

CHANGES IN THE PROPOSED ORDINANCE

- The requirement for decibel readings have been eliminated except for the areas specifically mentioned in the Downtown Entertainment District.
- When investigating a complaint the measurement will be taken from the property line of the property generating the sound.
- Decibel levels were slightly adjusted due to the change of location.
- The Ordinance allows an Officer to cite without witnessing a violation based on the totality of circumstances to include obtaining a witness statement.
- Notices of violation can now be issued through Code for habitual violators.
- The Ordinance has a specific section that addresses noise from vehicles.

ADVANTAGES TO THE PROPOSED ORDINANCE

- More practical and useful for property owners and enforcement purposes
- Increases ability for judicial success of civil judgment against offender

AFFECTED LOCATION



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

Prepared by: City of Cape Coral-Real Estate Division

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NAD 1983 State Plane Florida West FIPS 0902 Feet
Projection: Transverse Mercator False Easting: 656166.666667
False Northing: 0.000000 Central Meridian: -82.000000
Scale Factor: 0.999941 Latitude of Origin: 24.333333
Linear Unit: Foot US GCS North American 1983
Datum: D North American 1983
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DISCUSSION POINTS RELATING TO NOISE CONTROL IN THE AFFECTED AREA

1. Decibel limits.
2. Hours in effect.
3. Residences within the boundaries.

DECIBEL LIMITS

- The City of Fort Myers uses a 75dB limit in their downtown district. This number is appropriate in that jurisdiction in lieu of the markedly different physical layout of the area.
- The original proposal called for an 85dB limit. It is understood the concern was noise penetration into adjoining zoning areas at this level. A reasonable compromise would be 80dB. This is a small, non-impactful increase that would allow for other future uses, i.e. live music in the newly constructed outdoor patio areas without further legislation.
- It is important to note that this does not bind the City as other new districts, such as the Seven Islands and Bimini Basin, come online. Noise restrictions can be crafted under this ordinance with parameters germane to each of those particular districts.

HOURS IN EFFECT

- The City of Fort Myers' Downtown District 75dB limit decreases at 2 am, as this is the time establishments close for business. Reading are obtained from the source of the sound.
- The current ordinance allows for the following by receiving land use citywide: Commercial 72dB/7a-10p and 65dB/10p-7a Residential 66dB/7a-10p and 60dB/10p-7a. Readings are currently obtained from the receiving land.
- In our City, the new ordinance would allow noise at the higher level until 3 am to accommodate those 4COP establishments permitted under M.O. 3-2 to close at that time. These readings would be obtained from the source of the sound.
- It is important to note, M.O. 3-2(b)4 requires these establishments to “provide adequate buffering of noise impacts from open-air areas” and “have no negative effect on neighboring properties with respect to excessive noise. All efforts shall be made to prevent nuisances both inside and outside the establishment”.

RESIDENCES WITHIN THE BOUNDARIES

- All of our neighboring jurisdictions, that have designated entertainment districts, also have residences with said district.
- None of these entertainment districts have traditional single family residential zoned areas within them. They carry designations as special development, neighborhood commercial, mixed use, etc. In lieu of this, residences do not enjoy the lower dB levels commensurate with a traditional single family residential neighborhood. It is expected and understood that residing in an entertainment district entails higher noise levels.
- In our City, this area is zoned South Cape (SC). The residences within this area would be subject to the higher limit as a receiver or originator of sound.

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 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:

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_{eq} (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 46th 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. Eighty-five (85) dBA or eighty-seven (87) dBC between the hours of 6:00 p.m. and 3:00 a.m.
b. Sixty-five (65) dBA or Seventy-five (75) dBC between the hours of 3:00 a.m. and 6:00 p.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.

- (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 (c)(2)a.-d.; and
- k. Whether the sound is a listed exemption pursuant to Subsection (g) below.

(4) Prima facie evidence. Between the hours of 11:00 p.m. and 7:00 a.m., it shall be prima facie evidence that a sound (whether recurrent, intermittent, or continuous) is unreasonably loud and raucous if 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.

(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 _____ DAY OF _____, 2019.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2019.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
Ord/NoiseControl
5/6/19

Item Number: B.(2)
Meeting Date: 9/23/2019
Item Type: DISCUSSION

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Procurement Ordinance

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

Planning & Zoning/Staff Recommendations:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Revised Staff Presentation
Document Provided at Meeting

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Revised Staff Presentation	Backup Material
<input type="checkbox"/> Document provided at meeting	Backup Material

REVISED
9/19/19

PUBLIC PROCUREMENT

EXECUTIVE SUMMARY

Achieve general sense of direction for ordinance changes to streamline procurement process in the following areas:

- I. Modify the Consultant Competitive Negotiation Act (CCNA SAC-Engineering) process
 - a) SAC Committee composition
 - b) Approval of ranking by City Management
- II. Increase quotation threshold and Management Authority from \$50,000 to \$100,000
 - a) The City quoting process, of \$50,000, was established in 2007
 - b) Comparative Analysis reflect higher thresholds with a non-bifurcated process
 - i. The process is not bifurcated between City Management and City Council to ensure that there is not a perception of impropriety or unfair competition which may limit the vendor pool
- III. Further modifications to the ordinance and the procurement process will be forthcoming

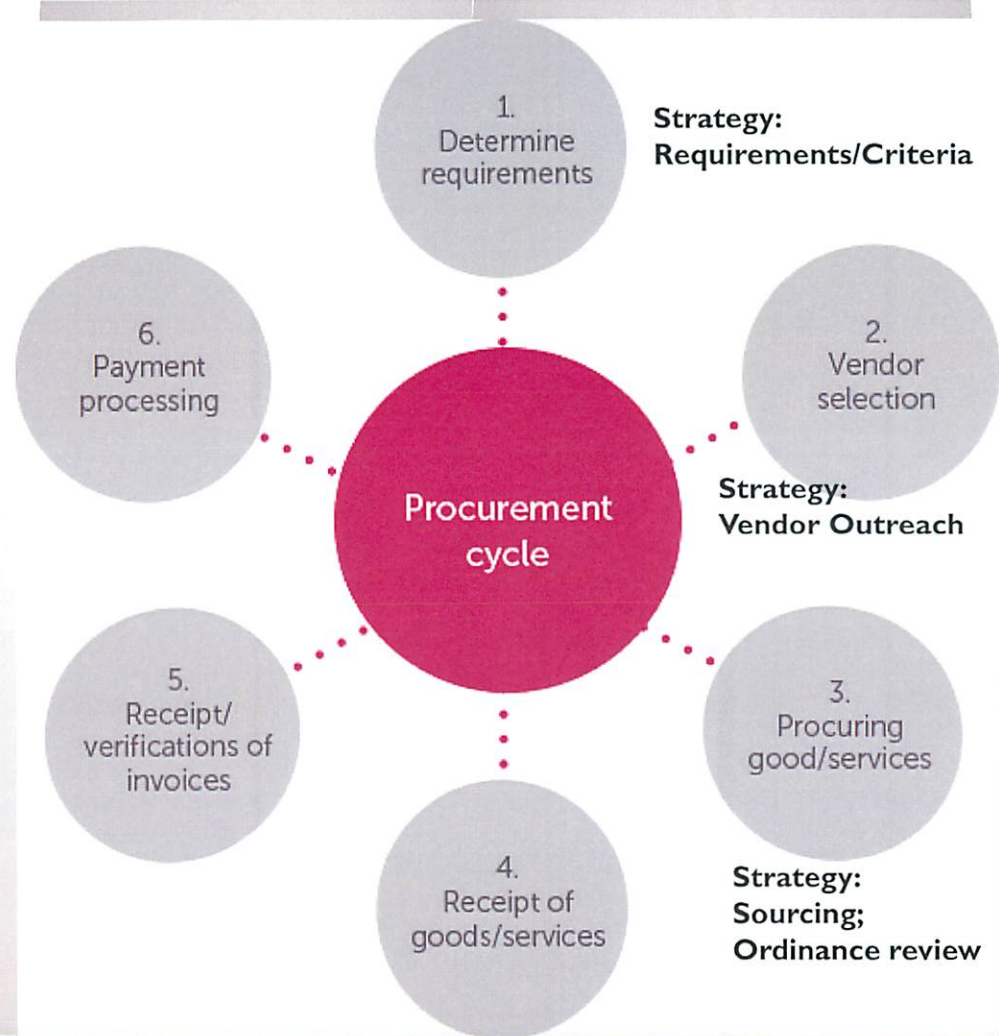
Agenda

- ☐ Procurement Cycle
- ☐ Legal Considerations
- ☐ Areas of Review

Procurement Cycle

Focus: #1 thru #3

1. Identify needs
2. Vendor Selection
3. Procuring



LEGAL CONSIDERATIONS – LOCAL, STATE AND FEDERAL REGULATION THAT GOVERNS PUBLIC PROCUREMENT

State

- ❑ **Chapter 287 – Purchasing – addressing municipality**
- ❑ **Chapter 119 – Public Records**
- ❑ **Chapter 255 - Construction – Bonds, Insurance**
- ❑ **Chapter 725 – Indemnification**
- ❑ **Chapter 838.22 – Bid tampering**

City of Cape Coral

- ❑ Ordinance - covers from dollar threshold to conflict of interest and ethics in business
- ❑ Administrative Regulation – under review – AR 16 and AR 23

Federal

- 2 CFR 200 - (Grant – FEMA)

As of 9/18/19

FY2019 - Fiscal Year to date**10/1/2018 - 09/30/2019**

Type	No. of Items	Dollar Value
Exempt	1	\$80,000
General (SCP; grant wording, Citywide funds)	2	\$18,453,067
Single/Sole Source	2	\$1,665,000
Bid	36	\$25,844,390
RFP	8	\$29,228,532
Quotes	1	\$72,050
Renewal/Extension	4	\$361,432
Addition (Upgrade) /Amendment to Contract/increase in Contingency	4	\$155,000
Negotiated Contract (SAC)	7	\$8,811,927
Waiver	2	\$132,000
Ratify/Emergency	2	\$180,000
Increase to PO (such as Hurricane Irma and others)	2	\$134,000
Piggyback	14	\$2,349,972
Staffing Cost Proposal (SCP)	5	\$668,754
RFQ/RFP(SAC)	8	\$0
Funding/non-proc	4	\$739,959
Other/Non-Procurement	5	\$0
Other/Ordinances	0	\$0
Other / CS	2	\$57,180
Other / CRA	1	\$45,567
Total	110	\$88,978,830

FY2019 –YTD as of 9/16/19 Purchase Orders

Small Purchase Threshold	<\$2,500	\$2,500 to \$19,999	\$20,000 to \$50,000	>\$50,000	Total
number of transactions	4185	1437	329	241	6192
Dollar Value	\$ 3,723,349.52	\$ 11,851,600.82	\$ 10,665,146.42	\$ 85,169,356.10	\$ 111,409,452.86
% of total purchases	68%	23%	5%	4%	
% of total purchase dollars	3%	11%	10%	76%	

FY2018 Purchase Orders

Small Purchase Threshold	<\$2,500	\$2,500 to \$19,999	\$20,000 to \$50,000	>\$50,000	Total
number of transactions	4653	1403	296	340	6692
Dollar Value	\$ 3,750,845.90	\$ 11,225,478.89	\$ 9,422,851.06	\$ 308,647,274.06	\$ 333,046,449.91
% of total purchases	70%	21%	4%	5%	
% of total purchase dollars	1%	3%	3%	93%	

Procurement Factors:

A. Types of Product

- Commodities - Product
- Service -
- Commodity/Service -
- Construction – Lump Sum; Unit Price

B. Specifications, criteria and scope of work

C. Procurement Methods

- Invitation to Bid (ITB)
- Request for Proposal (RFP)
- Request for Qualification (RFQ)
 - CCNA related
 - Pre-qualification
- Quotes
- Piggyback

D. Procurement Ordinance and Administrative Regulations

Proposed Changes to Ordinance

Ordinance Section	Proposed change
Section 2-144 (b) Purchase dollar threshold	Increase of the existing threshold
Section 2-142 Responsibility and Authority – P.O; Contract; Contract amendment and Renewals	Increase of the existing threshold
Section 2-144 (h) 287.055 – Consultant Competitive Negotiation Act	Modify the Ranking approval process
Housekeeping items	Review various items such as vendor registration, exemptions, clarification of sections



Questions?

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
	Florida Cities Benchmark																		
	City Name	Population (2019) *	Contact	Title	E-mail	Centralized Procurement?	Total Procurement Staff	Location of Procurement	Do you procure construction and professional services	Total Annual Procurement Spend	Small Dollar Limit no quotes required up to	\$ Informal Quotes Required up to	\$ Formal Quotes Required up to	\$ Formal Competitive Process above	Title of Positions with Contract Signature Authority and \$ limit	Council Approval \$ for Contracts	Council Approval \$ for Procurement	ERP or Financial System	Online Solicitation Platform
5	Punta Gorda	20,719	Mariam Pace	Procurement Manager	mpace@ci.punta-gorda.fl.us	Yes	Six Total, Procurement Manager, Senior PA, PA II, PA I, Assistant PA, Administrative Assistant	Finance Department	Yes for both	15,000,000	\$ 5,000.00	\$ 25,000.00	\$ 50,000.00	\$ 50,000.00	Procurement Manager up to \$50,000. City Manager \$50,000 - \$250,000	\$ 250,000.00	Commodities >250,000, Sole/Single Source, Professional and Consulting Services, Exempt Purchases and Waivers > 50,000, All franchise, inter-local, land and	Superion/ Navline	Ionwave
6	Naples	22,982	Jed Secory		jsecory@naplesgov.com	No - Hybrid	Three Professional Staff	City Manager	Yes on both	\$67,090,221.48	\$ 5,000.00	\$ 34,999.00	\$ 34,999.00	\$ 35,000.00	City Manager up to \$50,000. Purchasing Mgr. up to \$34,999	above \$50,000	above \$50,000	Tyler Munis v11.3	City of Naples' website and Demandstar as a courtesy upload
7	Venice	23,359	Peter Boers	Procurement Manager	pboers@venicegov.com	Yes	Two (2) FTE	Finance Department	Yes for both	\$110,533,159	\$ 3,000.00	\$ 10,000.00	\$ 10,000.00	\$ 150,000.00	Mayor City Manager up to 50k, then City Council	> \$150,000	\$ 150,000.00	Navline	DemandStar
8	Oviedo	41,800	Janet Vivian	Purchasing Agent	lvivian@cityofoviedo.net	No	One Purchasing Agent	Finance Department	Oversees the process for public works	1,700,000	\$ 5,000.00	\$ 49,999.00		\$ 50,000.00					Vendorlink
9	Winter Garden	46,938	Jennifer Maier, CPPB, FCCM	Procurement Manager	jmaier@cityofwinterpark.org														
10	Palm Beach Gardens	56,496	Kmi Ra	Purchasing Director	kmi.ra@pbaff.com	Yes	1 (Director)	City Manager	Yes for both	100,000,000	\$ 5,000.00	\$ 10,000.00		\$ 65,000.00	City Council - over \$65,000	\$ 65,000.00	\$ 65,000.00	Eden (Tyler Product)	Public Purchase, DemandStar, In-house
11	Bradenton	59,542	Ralph Ward, CPSM	Purchasing Manager	ralph.ward@cityofbradenton.com	No	Three Professional Staff	Public Works	Yes		\$ 2,500.00	\$ 24,999.00		\$ 25,000.00	Mayor/Council	all contracts	Above \$25,000	MUNIS (Tyler Technologies)	None at this time but looking
12	Wellington	68,121	Danielle Zembruski		zembruski@wellingtonfl.gov	Yes	Four	General Services	Yes for both	42,000,000	\$ 2,500.00	\$ 9,999.00	\$ 24,999.00	\$ 25,000.00	Director/Department Head - less than \$10,000 Senior Staff or Village Manager - less than \$25,000 Mayor - over \$25,000	> \$25,000	> \$25,000	Tyler Munis	DemandStar and Tyler Munis (Bid Central)
13	Deerfield Beach	80,988	Ivelsa "Evie" Guzman	Purchasing Manager	iguzman@deerfield-beach.com	Combination	three professional staff and a support position	own division	Yes both	Not available at this time due to new ERP system limitations	\$ 5,000.00	\$ 10,000.00	\$ 30,000.00	\$ 30,000.00	City Manager	Over \$30K	Over \$30K	One Solution	IonWave
14	Melbourne	85,106	Gregory Bunn, CPSM, CPIM	Procurement Manager	gregory.bunn@mlbfl.org	No	Four Professional staff, two support positions and one warehouse position	Finance Department	Professional Services-Yes, Construction-No.	53,700,000	\$ 5,000.00	\$ 15,000.00	\$ 35,000.00	\$ 35,000.00	City Manager-All contracts	Contracts more than \$35,000 committed spend	Bids more than \$35,000 committed spend	MUNIS (Tyler Technologies)	DemandStar
15	Fort Myers	87,019	Denise Finn, CPPO, C.P.M. CPPB	Procurement and Contracts Manager	dfinn@cityofftmyers.com	Yes	Four Professional staff, two support positions and three temporary positions	Finance Department	Yes for both	166,900,000	\$ 3,000.00	\$ 99,999.99		\$ 100,000.00	City Council	all contracts	\$ 100,000.00	Eden (Tyler Product)	PlanetBids
16	Palm Coast	92,237	Kelly Little-Downey	Purchasing Coordinator	klittle@pcoastcity.gov	No	A total of four Two fulltime procurement, one contracts administrator, and a procurement manager	Central Services	Yes for both	40,000,000	\$ 999.99	\$ 29,999.99	\$ 49,999.99	\$ 50,000.00	over \$30,000.00 City Manager	over \$30,000.00	N/A	Munis (Tyler product)	Bonfire (and we love it)
17	Plantation	94,599	Charles Spencer	Procurement Administrator	cspencer@plantation.org	Hybrid	(1) Procurement Administrator, (1) Principal Buyer	Finance Department	Yes for both	Unknown, due to the City's Hybrid setup	\$ 4,107.00	\$ 25,000.00	\$ 100,000.00	\$ 100,000.00	Mayor	\$ 25,000.00	\$ 25,000.00	Microsoft GP Dynamics	Demand Star
18	Boca Raton	103,874	Lynn Kunkel	Purchasing Manager	lkunkel@myboca.us	Yes	10	City Hall, Under Finance Dept.	Yes for both	90,000,000	\$ 7,500.00	\$ 50,000.00	\$ 50,000.00	\$50,000 nonconstruction \$100,000 Construction	City Manager, up to \$100,000, Mayor over \$100,000 - We do have delegations	\$100,000 non construction, \$150,000 Construction	\$100,000 non construction, \$150,000 Construction	H.T.E.	Ionwave
19	Lakeland	112,714	Mark Relford	Purchasing Manager	Mark.relford@lakelandgov.net	Yes	Five professional staff, three administrative staff, eight warehouse staff	Risk Management & Purchasing Department	Yes	153,000,000	\$ 1,500.00	\$ 35,000.00		\$ 35,000.00	Purchasing Manager up to \$25,000; City Manager \$25,000 to \$50,000; City Commission \$50,000 and above	\$ 50,000.00	n/a	Oracle eBS	Oracle iSupplier and Sourcing
20	City of Cape Coral	194,170	Wanda Roop	Procurement Manager	wroop@cityofcapecoral.net	NO - Hybrid (Procurement becomes involved with Vendor issues/concerns)	Procurement Manager, 3 sr. buyer(purchasing), 5 procurement specialist (contracts/projects), 1 admin (also assist with change orders)	Finance Department	Yes for both	110,000,000	\$ 2,500.00	\$ 20,000.00	\$ 50,000.00	\$ 50,000.00	Finance Director or Procurement manager - up to \$25,000 City Manager - up to \$50,000	\$ 50,000.00	\$ 50,000.00	Currently JDE transitioning to Tyler Munis by 2020	Demandstar
22	Surprise	98,288	John Curran, CPPB	Acting Procurement Manager	purchasing@ci-surprise.az	Yes	1 Director 5 Procurement Specialists 1 Contracts Administrator 1 Part-time Office Administrator	City Hall, Reports to Finance	Yes	\$134 Million	Up to \$7500	2501 to under \$25000	n/a	Over \$25000	Mayor or Purchasing Director as specified in Contract	Over \$25000	Over \$25000	Tyler Munis v11.3	DemandStar
23	Orlando	297,243	David Billingsley	Chief Procurement Officer	David.Billingsley@cityoforlando.net	Yes	22 total, 3 in City Stores, 3 in Asset Management, 16 in Procurement	Business and Financial Services	Yes	219,000,000	\$ 5,000.00	\$ 20,000.00	\$ 100,000.00	\$ 100,000.00	Chief Procurement Officer	\$ 100,000.00	\$ 100,000.00	Workday	Vendorlink
24	Tampa	403,178	Greg Spearman, CPPO	Director of Purchasing	greg@spearmansta.com	Yes	18 Purchasing staff (including Director Analysts, Sr. Analysts, 2 Managers and Purchasing Teams) 11 inventory	City Hall - Reports to the Chief of Staff	No for construction and construction related services. Yes for all other professional services	200,000,000	\$ 2,000.00	\$24,999.99 Looking to increase that amount to \$100,000		\$25,000 and above Looking to increase that amount to \$150,000 and above	Purchasing Director up to \$99,999.99 Looking to raise that to \$149,999.99	the Mayor can sign contracts regardless of the \$\$ amount and only after City Council approval	\$100,000 and above Looking to raise that to \$150,000 and above	Oracle EBS	DemandStar but we are evaluating the Oracle Sourcing Module