

## ORDINANCE 26-

This is what was presented to me for a first reading. I had asked for the current ordinance to be reverted to the 2020 ordinance (20-05) with the addition of my limited changes as outlined in my Intention Paper. This draft does not reflect what I requested. It also indicates with asterisks that there are missing sections of this draft, but there is no way to confirm the content of that missing material.

**ORDINANCE 26-\_\_**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, AMENDING CHAPTER 18, "ENVIRONMENT"; ARTICLE, IV "NOISE CONTROL"; SECTION 18-103, "DEFINITIONS,;" SECTION 18-104, "GENERAL NOISE PROHIBITIONS"; SECTION 18-106 "EXEMPTIONS"; SECTION 18-108, "ENFORCEMENT AND PENALTIES" OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES TO PROVIDE EFFECTIVE RULES AND ENFORCEMENT REGULATIONS RELATED TO EXCESSIVE NOISE CONTROL WITHIN THE CITY OF MARCO ISLAND; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marco Island ("City") has a significant government interest to protect, preserve, and promote the health, safety, welfare, peace, and quiet of residents and visitors of the city through the control, reduction, and prevention of noises that disturb, injure, or endanger the comfort, repose, health, peace, or safety of reasonable person of ordinary sensitivities; and

**WHEREAS**, the effective control of 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; and

**WHEREAS**, the Marco Island City Council finds that this Amendment to the City's Code of Ordinances is tailored to impose specific regulations to protect the public health, safety, and welfare within the municipal boundaries of Marco Island.

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA**, that:

**SECTION 1. Recitals.** Each and all the foregoing recitals be and the same are hereby incorporated into this Ordinance as if specifically set forth herein.

**SECTION 2. Amendment and Adoption.**

**Amendment and Adoption.** That Chapter 18, "Environment," Article IV, "Noise Control," Section 18-103, "Definitions," of the City of Marco Island Code of Ordinances, be, and the same is hereby amended to read as follows:

**CHAPTER 18 – ENVIRONMENT**

ARTICLE IV. – NOISE CONTROL

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Sec. 18-103. – Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. These definitions are supplemental to the definitions in section 1-2 of this code. The definitions in this section shall prevail in case of conflict.

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~~*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 unity of measurement is the dBC.~~

*Decibel meter* includes a calibrated sound level measuring instrument that meets or exceeds the standards set forth by the American National Standards Institute (ANSI) for Type 1 or Type 2 sound level meters. The device must be professionally calibrated annually and have a self-check calibration prior to any enforcement measurement. Smartphone applications or other non-calibrated consumer devices shall not be used for official enforcement purposes.

~~*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.~~

~~*Frequency* means the number of complete fluctuations per second of the sound wave.~~

~~*Intensity (or loudness)* means the magnitude of the fluctuation measured in atmospheric pressure units or microbars.~~

~~*Motor vehicle* means any self-propelled vehicle, such as, but not limited to, passenger cars, trucks, truck trailers, semitrailers, campers, motorcycles, minibikes, go-carts, amphibious craft on land, and dune buggies or racing vehicles which are propelled by mechanical power.~~

~~*Motorboat* means any vehicle which is primarily operated on water or which does operate on water, such as boats, barges, amphibious craft, or hover craft, and which is propelled by mechanical power.~~

~~*Plainly audible* means any sound that can be clearly heard and understood by a~~

~~reasonable person using such person's ordinary senses, so long as the person's hearing is not enhanced by any device, such as a hearing aid.~~

Plainly audible means a sound that can be clearly heard and identified by a person using their normal hearing faculties, without the use of any listening device. This includes the ability to distinguish the type of sound (such as music, speech, or a specific instrument) and, if speech, to discern the content or words being spoken. For enforcement purposes, the sound must be sustained and continuous for a minimum duration of 30 seconds. Brief, momentary, or isolated noises do not constitute a plainly audible sound under this definition.

~~Powered model vehicles~~ means any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, and which are being propelled by mechanical means.

~~Volume~~ means the degree of intensity, audibility, quality, strength, or loudness of sound.

### SECTION 3. Amendment and Adoption.

**Amendment and Adoption.** That Chapter 18, "Environment," Article IV, "Noise Control," Section 18-104, "General Noise Prohibitions," of the City of Marco Island Code of Ordinances, be, and the same is hereby amended to read as follows:

Sec. 18-104. – General noise prohibitions.

- (a) *Prohibition of excessive noise from a property.* It is a violation ~~unlawful~~ for any person, including the property owner(s), to permit, cause, allow, create, emit, or sustain excessive noise from a property, including the air space above the property. ~~Noise disturbances are irreversible and irreparable violations of this article.~~
- (b) *Prima facie evidence.* For the purposes of this subsection, the following shall constitute prima facie evidence that noise (whether recurrent, ~~intermittent,~~ or continuous) is excessive:
- (1) Between the hours of 10:00 p.m. and 7 a.m., the sound is plainly audible a minimum of 50 feet from the property line of the source of the sound or within a fully enclosed structure or residence on any receiving property; or
  - (2) Sound pressure levels by receiving land use.

Sound Measured for 10 seconds, and average reading cannot exceed the following:

Receiving Land Use Category	Time	Sound Pressure Level Limit (dBA)
<del>Residential zone, public space, or institutional zone</del>	7:00 a.m. — 9:00 p.m.	<u>60</u> <del>63</del> <del>68</del>
	9:00 p.m. — 7:00 a.m.	<u>55</u> <del>60</del>
Commercial zone	7:00 a.m. — 9:00 p.m.	<u>70</u> <del>72</del>
	9:00 p.m. — 7:00 a.m.	<u>63</u> <del>65</del>

(c) *Multifamily dwellings and duplexes:* It is ~~unlawful~~ a violation to create or permit to be created any sound that exceeds a sound pressure level of 50 dBA, during the hours between 7:00 a.m. to 9:00 p. m., or 45 dBA during the hours between 9:00 p.m. and 7:00 a. m. measured from inside any other dwelling unit within such multifamily or duplex structure. The plainly audible standard does not apply to this paragraph.

(d) ~~It is unlawful for any person owning or in possession of any building or premises to use or rent the same for any purpose if such use makes, continues, or causes to be made or continued, any noise disturbance.~~

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#### SECTION 4. Amendment and Adoption.

**Amendment and Adoption.** That Chapter 18, "Environment," Article IV, "Noise Control," Section 18-106, "Exemptions," of the City of Marco Island Code of Ordinances, be, and the same is hereby amended to read as follows:

Sec. 18-106. – Exemptions.

The following noises shall be exempt from the restrictions set forth in the other sections of this article:

- (1) Sound made by a horn or other ~~warning~~ warning device required or permitted by F. S. Section 316.271 or other statutory provision shall be regulated in accordance with state law.
- (2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency or any other public safety operation.
- (3) Noises resulting from emergency work, which is to be construed as work made necessary to restore property to a safe condition following a public calamity, or

work required to protect persons or property from any imminent exposure to danger. It shall be the burden of an alleged violator to prove an emergency.

- (4) Noises incidental to city approved refuse collection.
- (5) ~~Community events such as parades, festivals, sporting events, or fairs being conducted in accordance with the conditions contained in a special event permit granted by the city manager.~~ Sound from city permitted events including, but not limited to parades, festivals, sporting events, fairs, concerts, business special events, etc.
- (6) Noises associated with city operations, construction, or maintenance.
- (7) Noises associated with police or fire department training.
- (8) Sound from community and organized sporting events and school activities.
- (9) Noise associated with lightning warning systems.
- (10) Nonamplified crowd noise resulting from otherwise lawful public gatherings.
- (11) Noise from any aircraft operating in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instructions used pursuant to and within the duly adopted federal air regulations.
- (12) Amplified sound on property controlled by a governmental agency during governmental sponsored activities.
- (13) Sound produced by activities in the fields, grounds, or facilities of any sporting venue to which the public or community has access.
- (14) Sounds generated by houses of worship between 7:00 a.m. and 7:00 p.m.

## **SECTION 5. Amendment and Adoption.**

**Amendment and Adoption.** That Chapter 18, "Environment," Article IV, "Noise Control," Section 18-108, "Enforcement and Penalties," of the City of Marco Island Code of Ordinances, be, and the same is hereby amended to read as follows:

Sec. 18-108. – Enforcement and penalties.

Nothing in this section prohibits sworn law enforcement officers from charging persons responsible for acts that violate this article with breach of the peace or disorderly conduct pursuant to F. S. Section. 877.03.

- (1) Any person(s) violating this article shall be given a warning that a notice of violation or citation will be issued for violations of the city's noise ordinance if the person(s) responsible fails to bring the sound level into compliance with five minutes and ~~maintain a compliant sound level for the 48 hours that follow~~ and thereafter remains noncompliant or commits a repeat violation within the 48 hours that follow. The notice and warning may be given in writing or verbally to inform the person(s) responsible for a purported noise disturbance of the violation. The warning may be communicated verbally or in writing at the scene, and shall be documented in a written or electronic record sufficient to identify the property, date, and nature of the violation. Responding personnel may review prior warnings or violations associated with the

property for escalation purposes. Complainant identifying information collected by the city shall be handled in accordance with chapter 119 and city public records procedures No warnings will be issued after 10:00 p.m. 44:00 p.m.

- (2) Failure to timely bring the sound level into compliance shall be enforced under the provisions of chapter 14 of this code.
- (3) Any person(s) responsible for a violation of this article that jars, injures, or endangers the health, safety, welfare, or well being of a reasonable individual of ordinary sensibilities, because of the volume level or duration of the noise, may, without warning, be immediately issued a citation or notice of violation for an irreparable and irreversible offense.
- (4) Regardless of whether the property owner caused the noise disturbance occurring on their property, the property owner will be issued a notice of violation or citation for each individual violation of this article. The first violation ~~in a rolling 12-month period,~~ will result in the issuance of a notice of violation, which shall constitute an official warning. All subsequent violations in a rolling 12-month period ~~shall result in issuance of citations, or notices of violations that require a hearing before the special magistrate, and the potential imposition of a fine for the violation(s).~~ upon a finding of violation(s) the following fines shall be imposed:
  - (i) 1<sup>st</sup> violation - Up to \$250.
  - (ii) Subsequent Repeat violation(s) – Up to \$500.
  - (iii) Any violation determined to constitute irreparable or irreversible condition : Up to \$5,000 per violation.
- (5) Any person(s), including the property owner(s), who violates any of the provisions of this article shall be subject to a civil penalty as adopted by Resolution of the City Council, payable within 30 days after assessment unless a different period is provided by chapter 14, the citation, an order of the special magistrate, or as otherwise provided by Chapter 162, Florida Statutes.
- (6) Joint and several responsibility. Any person(s) responsible for 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.
- (7) The city may use all available means of enforcement provided in chapter 14 of this code ~~and applicable law, including recordation of liens and pursuit of collection or money-judgment remedies authorized by law.~~

## **SECTION 6. Severability/Interpretation.**

- (a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent

jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (\* \* \* \*) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

**SECTION 7. Effective Date.** This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this \_\_\_\_ day of \_\_\_\_\_, 2026.

**ATTEST:**

**CITY OF MARCO ISLAND, FLORIDA**

\_\_\_\_\_  
Joan Taylor, City Clerk

By: \_\_\_\_\_  
Darrin Palumbo, Chair

Approved as to form and legal sufficiency:

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Alan L. Gabriel, City Attorney