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**ORDINANCE 21-XX**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA AMENDING THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY AMENDING CHAPTER 18, "ENVIRONMENT," ARTICLE IV, "NOISE CONTROL," TO PROVIDE FOR AMENDMENTS TO SECTION 18-104, "GENERAL NOISE PROHIBITIONS," TO PROVIDE FOR AN ADJUSTMENT TO THE TIME AND THE SOUND PRESSURE LEVELS FOR WHICH A VIOLATION OF THE NOISE CONTROL ORDINANCE SHALL BE DETERMINED; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article II, Section 7, Florida Constitution, provides that adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise, and authorizes the adoption of local ordinances that are intended to protect its citizens from noise pollution; and

**WHEREAS**, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, the City of Marco Island is authorized to protect the public health, safety and welfare of its residents and has the power, and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

**WHEREAS**, section 1.01 of the Marco Island Charter empowers the City to adopt, amend, or appeal ordinances, resolutions and codes as may be required for the benefit of the City; and

**WHEREAS**, the Marco Island City Council desires to amend its current noise regulations in order to prevent excessive noises, which degrade the quality of life, disturbs the public peace, and jeopardizes the health, safety, and welfare of the citizens of Marco Island; and

**WHEREAS**, the United States Supreme Court has held that the police power of a state extends beyond regulation of health, morals, and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community; and

**WHEREAS**, the City of Marco Island finds that it is appropriate to adopt such noise regulations to protect its citizens, while at the same time narrowly tailoring such regulations to order to not infringe upon its citizen's rights under the First Amendment to the United States' Constitution, by regulating the hours and location of the noise restriction, and proscribing specific levels of sound (in decibels) that are reasonably related to the noise problem sought to be regulated; and

**WHEREAS**, the City of Marco Island City Council finds that this Ordinance serves a municipal and public purpose, and is in the best interest of the health, safety, and welfare of the citizens and residents of the City of Marco Island.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**

47 **OF MARCO ISLAND:**

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49 **Section 1. Recitals.**

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51 The foregoing “WHEREAS” clauses are true and correct and reflective of the legislative  
52 intent underlying this Ordinance and are hereby ratified and made a specific part of this  
53 Ordinance.  
54

55 **Section 2.** That Chapter 18, “Environment,” Article IV, “Noise Control,” of the City of  
56 Marco Island Code of Ordinances be, and the same is hereby amended to read as follows:  
57

58 **Article IV. Noise Control**

59  
60 \* \* \*

61 **Sec. 18-104. General noise prohibitions.**

62 (a) *Prohibition of unreasonably excessive noise from a property.* It shall be  
63 unlawful for any person(s), including the property owner(s), to permit,  
64 cause, allow, create, emit, or sustain unreasonably excessive noise from a  
65 property, including air space thereof, located in the City of Marco Island.  
66 Noise violations are considered irreversible and irreparable.

67 (b) *Prima facie evidence.* For the purposes of this subsection, the following  
68 shall constitute prima facie evidence that a sound (whether recurrent,  
69 intermittent, or continuous) is unreasonably excessive and raucous if:

70 (1) Between the hours of ~~8:00~~ 11:00 p.m. and 7:00 a.m., the sound is  
71 plainly audible a minimum of 50 feet from the property line of the  
72 source of the sound or within a fully enclosed structure or residence  
73 on any receiving property; or

74 (2) Sound pressure levels by receiving land use;

Receiving Land Use Category	Time	Sound Pressure Level Limit (dBA)
Residential zone, public space, or institutional zone	7:00 a.m.— <del>8:00</del> p.m. <u>9:00 pm</u> <del>8:00 p.m.</del> 9:00 pm —7:00 a.m.	<del>66</del> <u>70</u> 60
Commercial zone	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	72 65

75  
76 (3) Multifamily dwellings and duplexes. In the case of multifamily  
77 dwellings and duplex dwelling units, it shall be unlawful to create

78 or permit to be created any sound that exceeds a sound pressure level  
79 of 50 dBA, during the hours between 7:00 a.m. to 9:00 p.m., or 45  
80 dBA during the hours between 9:00 p.m. and 7:00 a.m., daily,  
81 measured from a neighbor's dwelling unit within such multifamily  
82 or duplex structure. The plainly audible standard does not apply in  
83 multifamily dwellings and duplexes.

- 84 (c) It shall be unlawful for any person owning or in possession of any building  
85 or premises to use or rent the same for any business or residential use, or for  
86 any purpose of pleasure or recreation if such use makes, continues, or causes  
87 to be made or continued, any noise disturbance, as defined in this article  
88 within the limits of the city.

89  
90 **Section 3. Codification.**

91  
92 It is the intention of the City Council, and it is hereby ordained, that the amendments to the  
93 City of Marco Island Code of Ordinances made by this Ordinance shall constitute new  
94 provisions within the Code of Ordinances, and that the sections of this Ordinance may be  
95 renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed  
96 to "Section", "Article" or other appropriate word.

97  
98 **Section 4. Conflicts.**

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100 All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict  
101 with the provisions of this Ordinance are hereby superseded and resolved to the extent of  
102 any conflict in favor of the provisions of this Ordinance.

103  
104 **Section 5. Severability.**

105  
106 If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to  
107 be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall  
108 not affect the validity of the other or remaining terms, sections, clauses, sentences or  
109 phrases portions of this Ordinance, and this Ordinance shall be read and applied as if the  
110 invalid, illegal, or unenforceable term, provision, clause, sentence or section did not exist.

111  
112 **Section 6. Effective Date.**

113  
114 This Ordinance shall become effective upon its adoption.

115  
116 ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this \_\_\_\_  
117 day of \_\_\_\_\_, 2021.

122 **ATTEST:**

123

124 \_\_\_\_\_

125 Laura Litzan, City Clerk

126

127

128 Approved as to form and legal sufficiency:

129

130 \_\_\_\_\_

131 Alan L. Gabriel, City Attorney

**CITY OF MARCO ISLAND, FLORIDA**

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

Jared Grifoni, Chairman