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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:**

48
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~~ 10:00 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.— 8:00 p.m. <u>9:00 pm</u> 8:00 p.m. 9:00 pm —7:00 a.m.	66 68 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.**

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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.**

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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.

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119 **CITY OF MARCO ISLAND FLORIDA**
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By: _____
Jared Grifoni, Chairman

Attest:

By: _____
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

By: _____
Alan L. Gabriel, City Attorney