

**CITY OF MARCO ISLAND  
ORDINANCE NO. 01-31**

**AN ORDINANCE RELATING TO THE ESTABLISHMENT OF A CITY OF MARCO ISLAND NOISE CONTROL ORDINANCE; ESTABLISHING INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR PROHIBITED NOISE AND NOISE DISTURBANCES; PROVIDING FOR MAXIMUM PERMISSIBLE SOUND LEVELS; PROVIDING FOR EXCEPTIONS, WAIVERS, AND PENALTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Section 1.01 of the Marco Island City Charter empowers the city to adopt, amend, or repeal ordinances, resolutions, and codes as may be required for the good governing of the City; and

**WHEREAS**, devices utilized in conjunction with the enforcement of this ordinance shall meet or exceed nationally recognized specifications and standards, and shall further be operated consistent with manufacturer approved procedures.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Marco Island, Florida that:

**Section 1. Short Title and Repealer.**

This division shall be known and may be cited as the "City of Marco Island Noise Control Ordinance".

**Section 2. Intent and Purpose.**

It is the intent and purpose of this chapter to regulate uses and activities in the City of Marco Island in such a manner as to prevent excessive noises, which degrade the quality of life, disturb the public peace, and jeopardize the health, safety and welfare of the citizens of Marco Island. It is further the intent of this chapter to recognize that factors such as the time of day, location (e.g. proximity to residences), necessity of public projects for the public good, and necessity of sounds incidental to allowed uses and activities must be considered in balancing the protection of public peace and individual freedoms.

### **Section 3. Definitions.**

All terminology used in this division, not specifically defined herein, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dBA.

*Construction* means any site preparation, assembly, erection, substantial repair, alteration (or similar action) of structures, utilities, public or private right-of-way or similar things. Construction does not include demolition.

*Decibel (dB)* means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of measure used in describing the amplitude of sound. Decibel is denoted as dB.

*Demolition* means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

*Device* means a mechanism which is intended to produce or which actually produces noise when operated or handled.

*Emergency* means any occurrence or set circumstances involving actual or imminent physical injury to persons or property which demands immediate action. It shall be the burden of the alleged violator to prove the "emergency".

*Emergency vehicle* means a motor vehicle used in response to a public calamity or to protect persons or property from imminent danger.

*Emergency work* means work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities, or work required to protect persons or property from an imminent exposure to danger.

*Enforcement Officer* means any law enforcement officer, code enforcement officer, or animal control officer for the City of Marco Island or Collier County Sheriffs Office.

*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, 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.

*Muffler* means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

*Noise* means any sound, which because of its volume level, duration, and character, annoys, disturbs, injures, endangers the comfort, health, peace, or safety, or is a nuisance to reasonable persons of ordinary sensibilities, or exceeds the noise levels as defined in Section 6.

*Ambient noise level* means the sound pressure level of the all encompassing noise associated with a given environment, being usually a composite of sounds from many sources; the A-weighted sound pressure level exceeded 90 percent of the time based on the one-hour period.

*Continuous noise* means a steady, fluctuating, or impact noise, which exists essentially without interruption, for a period of one hour or more.

*Cyclically-varying noise* means a steady, fluctuating, or impulsive noise, which may or may not contain a pure tone, which varies in sound pressure level such that the same level is obtained repetitively at reasonably uniform intervals of time.

*Fluctuating noise* means the sound pressure level of a fluctuating noise that varies more than six dB(A) during the period of observation, when measured with the slow meter characteristic of sound level meter, and does not equal the previously existing ambient noise level more than once during the period of observation.

*Impulsive noise* means a sound of short duration, usually less than one second, of sound pressure level 20 dB(A) or more over the ambient noise pressure level, using the fast meter characteristic, with an abrupt onset and rapid decay. Examples of sources of impulsive noise includes explosions and the discharge of firearms.

*Steady noise* means a sound pressure level which remains essentially constant during the period of observation, i.e., the fluctuations are too small to meet the criteria for fluctuating noise

*Period of observation* means the time interval during which acoustical data and facts are obtained. All periods of observation made hereunder shall be determined with regard to the character of the noise being measured and the particular instrument used to make the measurement. It shall be ANSI S.1.13-1971, or latest revision, of the American National Standards Institute.

*Person* means any natural person, individual, association, partnership, corporation, municipality, governmental agency, business trust, estate, trust, two or more persons having a joint or common interest or any other legal entity and includes any officer,

employee, department, agency or instrumentality of the United States, a state or any political subdivision of a state or any other entity whatsoever or any combination of such, jointly or severally.

*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.

*Private right-of-way* means any street, avenue, boulevard, highway, sidewalk, bike path, or alley, or similar place, which is not owned or controlled by a governmental entity.

*Property boundary* means an imaginary line exterior to any enclosed structure, at the ground surface, which separates the real property owned by one person from that owned by another person, and its vertical extension.

*Public right-of-way* means any street, avenue, boulevard, highway, alley, or public space which is dedicated to, owned or controlled by a public governmental entity.

*Public space* means any property or structures thereon normally accessible to the public.

*RMS (root means square)* means the square root of the mean of a set of squared values.

*RMS sound pressure* means the square root of the time averaged square of the sound pressure

*Receiving land use* means the land which is receiving the noise as designated by the City of Marco Island Zoning Map.

*Recreation vehicle* means a piece of mechanized equipment for conveyance for off-road use.

*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Sound level* means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting A, B or C as specified in American National Standards Institute specifications for sound level meters ANSI S1.401971, or the latest version thereof. If the frequency weighting employed is not indicated, the A-weighting shall apply.

*Sound level meter* means an instrument of Type Two or better, as specified in the American National Standards Institute Publication S1.4-1971, or the latest version

thereof, which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighing networks used to measure sound pressure levels.

*Sound pressure* means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

*Sound pressure level* means 20 times the logarithm to the base 10 at the ratio of the RMS sound pressure to the reference pressure of 20 micropascals ( $20 \times 10^{-6}$  N/m (squared)). The sound pressure level as denoted  $L_p$  or SPSL and is expressed in decibels.

*Sound "pure tone"* means any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this division, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure of the two contiguous one-third octave bands by five dB for center frequencies of 500 Hz and above and by eight dB for center frequencies between 160 and 400 Hz and by 15dB for center frequencies less than or equal to 125 Hz.

#### **Section 4. General Noise Prohibitions**

- (1) It shall be unlawful for any person to make, continue, or cause to be made or continued any noise, as defined in this chapter within the limits of the City.
- (2) It shall be unlawful for any person owning or in possession of any building or premises to use or rent the same for any business or residential use, or for any purpose of pleasure or recreation if such use makes, continues, or causes to be made or continued, any noise disturbance, as defined in this chapter within the limits of the City.

#### **Section 5. Specific Noise Prohibitions.**

The following specific standards and restrictions shall apply to specific uses and/or activities in the City of Marco Island except for such exemptions as are enumerated herein. The following acts are declared to be loud, disturbing, and/or excessive noise in violation of this chapter, but said acts shall not be deemed to be exclusive.

- (1) *Radios, stereos, audio or visual equipment, sound equipment, sound amplification devices, television sets, exterior loudspeakers and similar devices.* Operating or permitting the use or operation of any radio receiving set, musical instrument, stereo, sound equipment, audio or visual equipment, sound amplification devices, television, phonograph, DVD player, tape player, CD player, turn table, microphone, drum, exterior loudspeaker, or other device for the production or reproduction of sound in such a manner as to cause **noise**. The operation of any such device for the production or reproduction of sound, between the hours of 10:00 p.m.

and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building or structure in which it is located, shall be deemed prima facie evidence of a violation of this section.

Radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated in such a manner as to create noise at 50 feet or more from such device, when operated on a public right-of-way, waterways, beaches, or public space.

- (2) *Construction equipment and activity.* Operating or causing to be operated any equipment or performing any activity in furtherance of construction, repair, alteration or demolition work on buildings, structures, roads, or projects within the City:
  - (a) Between the hours of 7:00 p.m. and 7:00 a.m.
  - (b) For pile driving activities, between the hours of 7:00 p.m. and 8:00 a.m.
  - (c) On Sundays, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.
- (3) *Engine mufflers.* Operating any internal combustion engine, including such an engine associated with a motorboat, or motor vehicle without a muffler or other device at least as effective as that installed as original equipment by the manufacturer, which will effectively prevent loud or explosive noises therefrom.
- (4) *Motor vehicle, motorcycle or motorboat repair in residential areas.* The non-commercial repairing, rebuilding, modifying or testing any motor vehicle, off-road vehicle, or motorboat within or abutting any residential land use designation in such a manner as to create noise across a real property boundary between the hours of 10:00 p.m. and 7:00 a.m.
- (5) *Activities in the vicinity of schools, churches, and health care facilities.* Creating any excessive noise on any street adjacent to any school, church, or health care facility, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in a health care facility.
- (6) *Peddlers, hawkers, or vendors.* It shall be unlawful for peddlers, hawkers, or vendors to shout or cry along or on a roadway to the disturbance of the peace or quiet of a neighborhood.
- (7) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling, singing, or the making of similar noises, and loud, boisterous conduct other than normal conversation at reasonable levels, inside of or on the grounds of any public or private property between the hours of 10:00 p.m. to 7:00 a.m., so

as to annoy or disturb the quiet, comfort, or repose of other persons or create a disturbance.

- (8) *Horns, signal devices.* No person shall sound any horn or audible signal device of any motor vehicle, boat, engine, or machine of any kind while not in motion, nor shall such horn or signal device be sounded under any circumstances except as required by law, or as a danger warning, nor shall it be sounded for any unnecessary or unreasonable period of time.
- (9) *Fans and Air Conditioners.* Operating any noise creating fan or blower, air conditioner, compressor unit, pool heaters, pool pumps, heat pumps, or the electric motor or any engine used to drive such device, the operation of which causes excessive and unnecessary noise, unless such noise is muffled and deadened by adequate noise compression and muffling devices to minimize annoyance and disturbance to persons within range of hearing.
- (10) *Drums, cymbals, musical instruments and loudspeakers.* Creating, making, or maintaining any noise by the use of any drum, cymbals, loudspeaker, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business. This provision shall not apply to permitted special events.
- (11) *Bells or sirens on vehicles.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the sheriff, fire departments, and other public safety agencies.
- (12) *Skateboard ramps.* Using any skateboard ramp or similar configuration for skateboarding or rollerblading between 10:00 p.m. and 7:00 a.m. in a residential land use designation in such a manner that would result in noise across a real property boundary.
- (13) *Air blow or vacuum cleaners.* Operating any air-blow or vacuum cleaning equipment or similar devices for the cleaning of parking lots, walkways, driveways, or similar areas between the hours of 9:00 p.m. and 7:00 a.m. that would result in noise across a real property boundary.
- (14) *Landscape maintenance.* Undertaking landscape maintenance activities in such a manner as to create noise across a real property boundary between the hours of 9:00 p.m. and 7:00 a.m. Golf courses engaged in the regular maintenance of greens, fairways, practice areas, etc. are exempt from this provision.
- (15) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles in such a manner as to create noise across a real property boundary between the hours of 9:00 p.m. and 7:00 a.m.

- (16) *Animal noises.* It shall be unlawful for the owner or custodian of any animal to permit such animal to habitually bark, whine, howl, squawk, screech, crow or cause any other noise which is objectionable due to pitch, frequency, timing, or any combination thereof.
- (a) The enforcement officer shall investigate an alleged violation of this section upon the receipt of two (2) sworn affidavits of complaint signed by two (2) unrelated residents living in separate dwellings in the close vicinity of the alleged violation, or upon the receipt of one (1) sworn affidavit and the witness of the act by an enforcement officer.
- (b) The affidavit shall specify the address or location of the alleged violation, the nature, time, and date(s) of the act, the name and address of the owner, if known, and a description of the animal, if known.

**Section 6. Maximum Noise Level by Receiving Land Use Designation.**

No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table I and Table II, when measured at or within the property line of the receiving land use, as specified in this ordinance, which establishes uniform guidelines for measuring and recording sound levels for the enforcement of this subsection. The measurement period shall not be less than one minute (continuous).

**TABLE I**  
**Sound Levels by Receiving Land Use**

Receiving Land Use	Time Sunday – Thursday	Time Friday-Saturday-Day Before Federal Holiday	Sound Level Limit (dBA)
Residential	7:00 a.m. – 10:00 p.m. After 10:00 p.m. to 6:59 a.m.	7:00 a.m. – 11:00 p.m. After 11:00 p.m. to 6:59 a.m.	60 55
Commercial or Resort Tourist	7:00 a.m. to 10:00 p.m. After 10:00 p.m. to 6:59 a.m.	7:00 a.m. – 11:00 p.m. After 11:00 p.m. to 6:59 a.m.	65 60

- (1) District boundaries. When a noise source can be identified and its noise measured in more than one land use designation, the pressure level limits of the most restrictive use district shall apply at that designation boundary.

**TABLE II**  
**Maximum Unweighted Sound Pressure Levels**  
**(in unweighted decibels)**  
**Day and Night Steady Sound**

Octave Band Center Freq. (In Hertz)	Residential Use	Commercial or Resort Tourist Use
31.5	Day 69 – Night 64	Day 74 – Night 69
63	Day 69 – Night 64	Day 74 – Night 69
125	Day 66 – Night 61	Day 71 – Night 66
250	Day 62 – Night 57	Day 67 – Night 62
500	Day 58 – Night 53	Day 63 – Night 58
1000	Day 53 – Night 48	Day 58 – Night 53
2000	Day 49 – Night 44	Day 54 – Night 49
4000	Day 46 – Night 41	Day 51 – Night 46
8000	Day 42 – Night 37	Day 47 – Night 42
DBA	Day 60 – Night 55	Day 65 – Night 60

Correction for character of sound:

- 1) For any source of sound, which emits a pure tone the maximum sound level limits set forth in Table I shall be reduced by five dBA.
- 2) For any source of impulsive sound, which is of short duration with an abrupt onset, the maximum sound level limits set forth in Table shall be increased by ten dBA from 7:00 a.m. to 10:00 p.m.

**Section 7. Exemptions.**

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

- (1) Noises of authorized safety signals and warning devices.
- (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.
- (4) Noises incidental to city approved refuse collection.
- (5) Noises associated with uses or activities whereby an administrative approval to produce such noises contrary to the restrictions of this chapter has been obtained.

- (6) 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 or designee.
- (7) Noises associated with public works construction or maintenance.
- (8) Noises associated with police or fire training.
- (9) Community and organized sporting events and school activities.

### **Section 8. Waiver.**

Applications for a permit for relief from the noise levels designated herein may be made to the city manager on the basis of hardship. A permit granted hereunder shall contain all conditions upon which the permit has been granted and shall specify a reasonable time period during which the permit shall be in effect. Relief may be granted if:

- (1) Additional time is required for the applicant to modify his activity to comply with this article;
- (2) The activity or noise source is of a temporary nature;

The city manager may prescribe any condition he deems necessary to minimize any adverse effect upon the community.

Any party feeling aggrieved by the denial of its application for waiver by the city manager or designee may appeal such denial to the city council, such appeal to be filed no later than thirty (30) days from the date of denial.

### **Section 9. Penalties.**

Any person or persons, property owner, firm or corporation, or any agent thereof, who violates any of the provisions of any subsection of this ordinance may receive a citation (fine) or be cited to appear before the City of Marco Island, Code Enforcement Board, or in the Collier County Court. The Code Enforcement Board or Collier County Court may impose fines or penalties against the owner upon conviction of the violation in the amount of up to \$500 per day for each day the violation continues without correction.

### **Section 10. Civil Remedies.**

In addition to the penalties provided in Section 10, the city manager is hereby authorized to institute any appropriate action or proceeding including suit for injunctive relief in order to prevent or abate violations of this subsection.

### **Section 11. Incorporation, Conflict and Severability**

(1) It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of

Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

(2) All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.

(3) If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

**Section 12. Effective Date.**

This ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 5<sup>th</sup> day of November 2001.

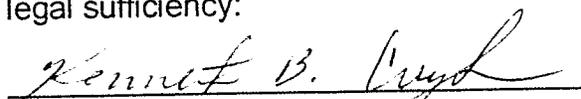
Attest:

  
\_\_\_\_\_  
A. William Moss  
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY:   
\_\_\_\_\_  
E. Glenn Tucker, Chairman

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Kenneth B. Cuyler  
City Attorney