

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-7

DATE: January 8, 2009

SUBJECT: First Reading Ordinance No. 1011-09 Amending Chapter 8.10 SMC Public Disturbance Noise

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to:

1. Have First Reading of Ordinance No. 1011-09 amending Chapter 8.10 of the Sultan Municipal Code.
2. Provide direction to staff on implementing the supplemental recommendations (below) of the small work group.

STAFF RECOMMENDATION:

1. Have First Reading of Ordinance No. 1011-09 amending Chapter 8.10 of the Sultan Municipal Code increasing the penalty for a second violation and infraction under section 8.10.060 of this chapter; improving how the regulations are written; providing for severability; and establishing an effective date.
2. Provide direction staff on education and outreach efforts regarding noise regulations as recommended by the small work group.

SMALL WORK GROUP RECOMMENDATION:

A small work group organized by Council member Davenport-Smith spent significant time discussing the City's noise regulations. After much discussion, the group recommends increasing the penalty for the second offense from \$200.00 to \$500.00. The group had two supplemental recommendations:

1. Law enforcement officers should receive training on the regulations and enforce the regulations in compliance with the Sultan Municipal Code.
2. City staff should prepare outreach materials to educate the public on the City's noise regulations.

SUMMARY:

Councilmember Sarah Davenport-Smith hosted several meetings with local business owners and community members to discuss Sultan's noise ordinance regulations under the Sultan Municipal Code 8.10 (Attachment B).

The meetings were also an opportunity to gather input on the staff proposal to adopt a special events permit to regulate the impacts of special events on the City's infrastructure and services. The work on the special events regulations will continue in February.

Small Work Group Recommended Changes

The small work group recommends increasing the fine from \$200 to \$500 for a second violation and infraction under section 8.10.060.

8.10.060 Punishment.

A first violation and infraction of this chapter shall be punished with a penalty of \$100.00. A second violation and infraction of this chapter shall be punished with a penalty of ~~\$200.00~~\$500.00. A third and/or subsequent violation and infraction of this chapter is a misdemeanor and shall be punished with a fine of \$500.00 and/or incarceration in jail for a period not to exceed 30 days. (Ord. 799-02)

Attorney Recommended Changes

The city attorney reviewed the public disturbance noise regulations as a result of the small work group evaluation of the code. The attorney is recommending minor wording changes to the Section 8.10.010 – Definitions and Section 8.10.040 Enforcement:

8.10.010 Definitions.

For the purposes of this chapter, the following definitions shall apply: "Public disturbance noise" shall mean the following sources of sound:

I. Sound originating from a motor vehicle on the public highway when the vehicle ~~is operated without~~does not have a muffler in good working order ~~and in accordance or is otherwise not in compliance~~ with applicable laws and regulations;

8.10.040 Enforcement.

Where ~~this chapter defines~~the definition of "public disturbance noise" includes as sound that unreasonably interfering-interferes with the peace, comfort and repose of owners or possessors of real property or neighboring property, ~~only after a complaint has been made by such a person may the police department issue a civil infraction notice~~ may only be issued after receipt of such a complaint. In all other instance ~~of a~~ "public disturbance noise" a civil infraction notice may be issued without a complaint. (Ord. 799-02)

BACKGROUND:

The City has experienced conflicts between business owners and residents over noise generated from business establishments. This issue is not unique to Sultan. The Sultan Municipal Code has noise regulations codified in Chapter 8.10 of the Sultan Municipal Code. The noise ordinance is similar to ordinances adopted by other cities throughout Washington State. The key issue for the police department is enforcement of the regulations.

The City Council discussed these issues at its July 27, 2008 meeting. Councilmember Davenport-Smith volunteered to host a community meeting to take input and feedback on potential changes to the city's noise regulations and implementation of a special events permit.

The community forum was advertised in the Sky Valley Chamber October newsletter. Invitations were sent to local business owners and community members who have expressed an interest in this issue. City staff sent a notice regarding the meeting to participants in the City's listserve e-mail list.

As a result, a small work group of interested business owners and community members was formed. The group met several times between September 2008 and December 2008 to review the noise regulations. The group made the following determinations:

- The problem is a quality of life issue resulting from zoning commercial, retail and residential uses adjacent to one another.
- Overall Chapter 8.10 SMC is consistent with other cities' codes.
- Changing 8.10.050 Separate Offenses to provide for more than one violation in a 24 hour period could provide additional leverage for enforcement but is unlikely to change the behavior of a violator. Instead the recommendation is to increase the fine for the second offense from \$200.00 to \$500.00 under 8.10.060.
- Increasing fines under 8.10.060 could penalize businesses with limited or no control over their customers. Increased fines could also impact commercial businesses acting within their normal course of business (e.g. Romac, Powerscreen, etc.).
- The real problem is consistent understanding of the noise ordinance requirements and consistent enforcement by police personnel.
- The City should create a community focus sheet on the noise ordinance rules using simple language.

RECOMMENDED ACTION:

1. Have First Reading of Ordinance No. 1011-09 amending Chapter 8.10 of the Sultan Municipal Code increasing the penalty for a second violation and infraction under section 8.10.060 of this chapter; improving how the regulations are written; providing for severability; and establishing an effective date.
2. Provide direction staff on education and outreach efforts regarding noise regulations as recommended by the small work group.

ATTACHMENTS

- A – Ordinance No. 1011-09 Amending SMC 8.10
 - B – Proposed amendments to Chapter 8.10 SMC
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CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 1011-09

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING CHAPTER 8.10 PUBLIC DISTURBANCE NOISE INCREASING THE PENALTY FOR A SECOND VIOLATION AND INFRACTION UNDER SECTION 8.10.060 OF THIS CHAPTER; IMPROVING HOW THE REGULATIONS ARE WRITTEN; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council formed a small work group consisting of Council representatives, community members and business owners to review the City's noise regulations; and

WHEREAS, the small work group met several times between September 2008 and December 2008 to review the noise regulations and recommend changes to the City Council; and

WHEREAS, the small work group recommended increasing the penalty for a second violation and infraction of the noise regulation from \$200.00 to \$500.00 and;

WHEREAS, the City Council finds it necessary to amend Chapter 8.10 to increase the penalty for a second violation and infraction of this chapter consistent with the small work group recommendation; and

WHEREAS, amending the Chapter 8.10 further provides an opportunity to improve how the regulations are written and;

WHEREAS, the Sultan City Council finds this ordinance is in the interest of the public health, safety, and welfare; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1 Chapter 8.10, Public Disturbance Noise is hereby amended to read as follows:

8.10.010 Definitions.

For the purposes of this chapter, the following definitions shall apply: "Public disturbance noise" shall mean the following sources of sound:

I. Sound originating from a motor vehicle on the public highway when the vehicle does not have a muffler in good working order or is otherwise not in compliance with applicable laws and regulations;

8.10.040 Enforcement.

Where the definition of “public disturbance noise” includes sound that unreasonably interferes with the peace, comfort and repose of owners or possessors of real property or neighboring property a civil infraction notice may only be issued after receipt of such a complaint. In all other instance a civil infraction notice may be issued without a complaint.

8.10.060 Punishment.

A first violation and infraction of this chapter shall be punished with a penalty of \$100.00. A second violation and infraction of this chapter shall be punished with a penalty of \$500.00. A third and/or subsequent violation and infraction of this chapter is a misdemeanor and shall be punished with a fine of \$500.00 and/or incarceration in jail for a period not to exceed 30 days. (Ord. 799-02)

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3 Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

This Ordinance shall take effect on _____, 2009 at 5:00 p.m.

PASSED by the City Council and APPROVED by the Mayor this ____ day of _____, 2009.

By _____
CAROLYN ESLICK, Mayor

ATTEST:

By _____
LAURA KOENIG, City Clerk

Approved as to form:

By _____
MARGARET KING, City Attorney

Published: _____, 2009

Chapter 8.10 PUBLIC DISTURBANCE NOISE

Sections:

[8.10.010](#) Definitions.

[8.10.020](#) Exemptions.

[8.10.030](#) Infraction.

[8.10.040](#) Enforcement.

[8.10.050](#) Separate offenses.

[8.10.060](#) Punishment.

[8.10.070](#) Evidence in proceedings.

8.10.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

“Public disturbance noise” shall mean the following sources of sound:

A. Frequent, repetitive or continuous sound from any horn or siren attached to a motor vehicle except as a warning of danger or specifically permitted or required by law;

B. Frequent, repetitive or continuous sound in connection with the starting, operating, repairing, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine in any residential zone which unreasonably interferes with the peace, comfort and repose of owners or occupants of real property in the residential zone;

C. Loud or raucous sound from any activity which unreasonably interferes with the operation of any school, church, hospital, sanitarium or nursing or convalescent facility;

D. Frequent, repetitive or continuous sound which emanates from a building structure or property, and created by musical instrument, whistle, sound amplifier, stereo, jukebox, radio, television or other device capable of reproducing or creating sound, such as sounds originating from a band session, tavern operation or commercial sales lot which unreasonably interferes with the peace, comfort and repose of owners or occupants of nearby property;

E. Sound from a motor vehicle audio sound system, such as a radio, tape player or compact disc player, when the volume is such that the sound can be clearly heard by a person of normal hearing at a distance of more than 50 feet from the vehicle itself;

F. Sound from carried or transported portable audio sound equipment, such as a radio, tape player or compact disc player, when the volume is such that the sound can be clearly heard by a person of normal hearing at a distance of more than 50 feet from the source of the sound;

G. Frequent, repetitive or continuous sound which emanates from a residence, structure or property, and created by audio sound equipment, musical instruments or social gatherings which unreasonably interferes with the peace, comfort and repose of owners or occupants of neighboring residential properties;

H. Sound from squealing or screeching of motor vehicle tires in contact with the ground or other roadway surface because of rapid acceleration, braking or excessive speed around corners except such sounds which arise from actions to avoid danger;

I. Sound originating from a motor vehicle on the public highway when the vehicle ~~is operated without~~does not have a muffler in good working order ~~and in accordance or~~is otherwise not in compliance with applicable laws and regulations;

J. Sound from yelling, shouting, hooting, whistling or singing on or near the public streets occurring between the hours of 11:00 p.m. and 7:00 a.m. which unreasonably interferes with the peace, comfort and repose of owners or occupants of real property;

K. Sound originating from residential real property relating to temporary projects for the maintenance or repair of homes, grounds or appurtenances, including sounds from lawnmowers, power hand tools, snow removal equipment and the like when the same occurs between the hours of 10:00 p.m. and 7:00 a.m. weekdays and 10:00 p.m. and 9:00 a.m. on weekends;

L. Sounds originating from construction sites and activities, including but not limited to sounds from construction equipment, power tools and hammering between the hours of 10:00 p.m. and 7:00 a.m. weekdays and 10:00 p.m. and 9:00 a.m. on weekends except such sounds which arise from emergency construction work to protect public or personal health and safety. (Ord. 799-02)

8.10.020 Exemptions.

Though the following sources of sound may fall within the definitions of a “public disturbance noise” as defined in the previous section, the following sounds shall be exempt and shall not be a public disturbance noise:

A. Noise originating from aircraft in flight and sounds which originate in airports and are directly related to flight operations;

B. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety relief intent of the device;

C. Noise created by fire or security alarms, or noise created by emergency equipment;

D. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;

E. Noise created by a special event so long as the event is in compliance with the terms and conditions of its special event permit;

F. Noise created by natural phenomenon;

G. Noise created by public utility facilities including electrical substations;

H. Noise created from local school marching bands while practicing;

I. Noise created by bells, chimes or carillon not operated for more than five minutes in any one hour from the hours of 7:00 a.m. to 10:00 p.m., but not including such noise as is artificially created and amplified and broadcast via loud speaker; and

J. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad. (Ord. 799-02)

8.10.030 Infraction.

It is unlawful and a civil infraction for any person to cause or allow to be emitted a nonexempt public disturbance noise as defined by this chapter. (Ord. 799-02)

8.10.040 Enforcement.

Where ~~this chapter defines~~ the definition of “public disturbance noise” includes as sound that unreasonably interfering-interferes with the peace, comfort and repose of owners or possessors of real property or neighboring property, ~~only after a complaint has been made by such a person may the police department issue a civil infraction notice may only be issued after receipt of such a complaint.~~ In all other instance of a “public disturbance noise” a civil infraction notice may be issued without a complaint. (Ord. 799-02)

8.10.050 Separate offenses.

For enforcement purposes, sound emitted during separate days shall be deemed a separate violation. A day is a 24-hour period beginning at 12:01 a.m. (Ord. 799-02)

8.10.060 Punishment.

A first violation and infraction of this chapter shall be punished with a penalty of \$100.00. A second violation and infraction of this chapter shall be punished with a penalty of ~~\$200.00~~\$500.00. A third and/or subsequent violation and infraction of this chapter is a misdemeanor and shall be punished with a fine of \$500.00 and/or incarceration in jail for a period not to exceed 30 days. (Ord. 799-02)

8.10.070 Evidence in proceedings.

In any proceeding under this chapter, evidence of sound level through the use of sound level meter readings shall not be necessary to establish the commission of the violation. (Ord. 799-02)