

Title 10 Regulation of Activities

Division I. Penal Code

Chapter 10.08 Offenses Against Public Health

DRAFT ORDINANCE NO. C - _____

An ordinance relating to noise control, adopting a new chapter 10.08D to title 10 of the Spokane Municipal Code and repealing SMC 10.08.020

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 10.08D to title 10 of the Spokane Municipal Code to read as follows:

Chapter 10.08D Noise Control

Sections:

- 10.08D.010 Declaration of Policy
- 10.08D.020 Findings of Special Conditions
- 10.08D.030 Definitions
- 10.08D.040 Exemptions
- 10.08D.050 Unlawful Sounds - Maximum Permissible Environmental Sound Levels
- 10.08D.060 Identification of Environments
- 10.08D.070 Maximum permissible environmental sound levels
- 10.08D.080 Commercial Noise
- 10.08D.090 Public Disturbance Noise
- 10.08D.100 Entertainment Facilities
- 10.08D.110 Special Events permit
- 10.08D.120 Noise Variance
- 10.08D.130 Affirmative Defense
- 10.08D.140 Violation – Penalty
- 10.08D.150 Construction - Severability

10.08D.010 Declaration of Policy

It is the policy of the City to minimize the exposure of citizens to the harmful physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare while affording appropriate protection to free speech activity as required by applicable constitutional law. It is the express intent of the City to regulate the level of noise in a manner, which promotes commerce; the use, value and enjoyment of property; sleep and repose; and the quality of the environment. It is the purpose of this section to enable

all citizens of the City to peacefully coexist in a manner which is mutually respectful of the interest and rights of others.

10.08D.020 Findings of Special Conditions

The problem of noise in the City has been a continuous public health, safety and welfare concern for the City of Spokane government and its departments, including the Police Department. On the basis of this experience and knowledge of conditions within the City, the City Council finds that special conditions exist within the City, which makes necessary any and all differences between this chapter and the regulations adopted by the Washington State Department of Ecology.

10.08D.030 Definitions

All terminology used in this chapter which is not defined below shall be interpreted in conformance with the most recent definitions used by the American National Standards Institute (ANSI) or its successor body.

“A-weighted sound level” means the sound pressure level in decibels measured using the “A”-weighted network on a sound level meter as specified by the American National Standards Institute specification for sound level meters as now existing or as hereafter amended or modified. The level so read is designated dBA.

“Ambient sound” means the sound level at a given location that exists as a result of the combined contribution in that location of all sound sources, excluding the contribution of a source or sources under investigation for violation of this code and excluding the contribution of extraneous sound sources.

“Amplified” means to increase a sound level by electronic, mechanical or other means.

“Amplification equipment” means any device, whether mechanical, electrical, or other, used to increase the loudness or volume and intensity of sound.

“Background sound level” means the level of all sounds in a given environment, independent of the specific source being measured”

“Commercial Noise” means Noise emitted from commercial activities including those noises generated by a combination of equipment, facilities, operations, or activities employed in the production, storage, handling, sale, purchase, exchange, or maintenance of a product, commodity, or service and those noise levels generated in the storage or disposal of waste products.

“dB (A)” means the sound level as measured with a sound level meter using the "A" weighting network. This frequency-weighting network for the measurement of sound levels shall comply with standards established by the American National Standards Institute specifications for sound level meters S1.4-1983 (R2006)/S.14A-1985 (R2006), or as amended.

“Decibel” (dB) means the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty times the logarithm to the base ten of the ratio of the sound pressure to the pressure of a reference sound (twenty micropascals); abbreviated “dB.”

“EDNA” means environmental designation for noise abatement, which is an area within which maximum permissible noise levels are established by the Washington State Department of Ecology and this code.

“Law enforcement officer” means a police officer or other officials who have a limited police commission.

“Leq” means the equivalent A-weighted sound level which is a constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. Leq is used to characterize complex, fluctuating sound levels with a single number. Typical intervals for Leq are hourly, and daily. The applicable time period for the Leq must be specified.

“Lmax” means the maximum recorded root mean square (rms) A-weighted sound level for a given time interval or event. Lmax “fast” is defined as a 125-millisecond time-weighted maximum.

“L(n)” means sound level that is exceeded “n” percent of the time. For example a sound that exceeded a certain level 8% of the time would be designated L08. A level exceeded 90% of the time would be designated as L90. The L90 descriptor is used to characterize the ambient condition in environments with extraneous sounds.

“Plainly audible” means any sound for which any of the content of that sound, such as, but not limited to, comprehensible musical rhythms, is communicated to a person using his or her unaided hearing faculties. For the purposes of the enforcement of this code, the detection of any component of sound, including, but not limited to, the rhythmic bass by a person using his or her unaided hearing faculties is sufficient to verify plainly audible sound. It is not necessary for such person to determine the title, specific words or artist of music, or the content of any speech.

“Performer” means an artist who engages in any constitutionally-protected expressive activities on a “public right-of-way,” including but not limited to the following: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing, reading, puppetry, sidewalk art, and reciting.

“Public disturbance noise” means: “unreasonable sound” a person causes or permits to be caused, either originating from the real or personal property said person possesses or controls, or from the person or his personal property while on public property or the public right-of-way. “Unreasonable sound” is defined in this chapter.

“Public right-of-way” means a public highway, road, street, avenue, alley, driveway, path, sidewalk, roadway, or any other public place or public way.

“Receiving property” means real property, including, but not limited to, buildings, grounds, offices and dwelling units from which sound levels from sound sources outside such property may be measured. Individual offices or dwelling units within a building may constitute a receiving property.

“Sound amplification equipment” means any machine or device for the amplification of the human voice, music or any other noise or sound.

“Sound level” means a weighted sound pressure level measured by the use of a sound level meter using an A-weighted network and reported as decibels, dBA.

“Sound level meter” means any instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specified manner and that complies with standards established by the American National Standards Institute specifications for sound level meters S1.4-1983 (R2006)/ S1.4A-1985 (R2006), or, as amended.

“Sound reproduction device” means a device intended primarily for the production or reproduction of sound, including but not limited to any musical instrument, radio receiver, television receiver, tape recorder, phonograph or electronic sound amplifying equipment.

“Total sound level” means that the measured sound level represents the combined sound level of the source or sources under investigation and the ambient sound level. Total sound level measurements shall exclude extraneous sound sources.

“Unreasonable sound” means any excessive or unusually loud sound that unreasonably annoys, disturbs, interferes with, injures or endangers the peace, comfort, health, repose or safety of a reasonable person of normal sensibilities, or that causes injury or damage to property or business.

10.08D.040 Exemptions

- A. The City exempts from the provisions of this chapter those sounds set forth in WAC 173-60-050 unless otherwise specially prohibited under this Chapter.
- B. Activities which receive a Special Event Permit under SMC 10.39 and provided the provisions of SMC 10.08D.110 are met.
- C. Sounds created by the official operation of public safety emergency equipment.

10.08D.050 Unlawful Sounds - Maximum Permissible Environmental Sound Levels

It is unlawful for any person to cause or permit sound, or for any person in possession or control of real or personal property to permit sound to intrude into the real property of another person whenever such sound exceeds the maximum permissible sound levels set forth in this chapter.

10.08D.060 Identification of Environments

A. Environmental designations for noise abatement are as follows:

1. Class A EDNA Designation: Residential land use district:

Residential Agricultural	RA
Residential Single-family	RSF
Residential Two-family	RTF
Residential Multifamily	RMF
Residential High Density	RHD

2. Class B EDNA: Commercial, Retail and Office land use district:

Office	O
Office Retail	OR
Neighborhood Retail	NR
Neighborhood Mixed Use	NMU
Community Business	CB
General Commercial	GC
Center and Corridor	CC1, CC2, CC3, CC4
Central Business District	CBD-1, CBD-2, CBD-3, CBD-4, CBD-5, CBD-6

3. Class C EDNA: Industrial land use district:

Light Industrial	LI
Heavy Industrial	HI
Planned Industrial	PI

B. The land use districts listed in the City of Spokane Land Use Code, Title 17C SMC, are classified for the purposes of this chapter as follows:

1. Residential land use district: Residential Agricultural, RA; Residential Single-family, RSF; Residential Two-family, RTF; Residential Multifamily, RMF; Residential High Density, RHD;
2. Commercial, Office and Retail land use district: Office, O; Office Retail, OR; Neighborhood Retail, NR; Neighborhood Mixed Use, NMU; Community Business, CB; General Commercial, GC; Center and Corridor, CC1, CC2, CC3, CC4; Central Business District, CBD-1, CBD-2, CBD-3, CBD-4, CBD-5, CBD-6;
3. Industrial land use district: Light Industrial, LI; Heavy Industrial, HI; Planned Industrial, PI.

10.08D.070 Maximum permissible environmental sound levels

A. Maximum Permissible Environmental Sounds

For sound sources located within the city, no sound is permitted to exceed the maximum permissible exterior sound levels established by WAC 173-60. Maximum permissible sound levels are as follows:

EDNA of Noise Source	EDNA of Receiving Property		
	Class A (dBA)	Class B (dBA)	Class C (dBA)
Class A	55	57	60
Class B	57	60	65
Class C	60	65	70
Class A – Residential Zones			
Class B – Commercial, Office, Retail Zones			
Class C – Industrial Zones			

- B. The maximum permissible sound levels established by this chapter are modified as follows:
 - 1. Reduce by 10 dBA between the hours of 10:00 p.m. to 7:00 a.m. for receiving property in Class A EDNAs; and
 - 2. Increase for short duration for any receiving property at any time:
 - a. Increase by five dBA for 15 minutes (L08) in any one-hour period; or
 - b. Increase by 10 dBA for five minutes (L02) in any one-hour period; or
 - c. Increase by 15 dBA for 1.5 minutes (Lmax) in any one-hour period; and
- C. Where a receiving property lies within more than one EDNA classification, the maximum permissible sound level shall be determined by the most noise-sensitive EDNA zone.
- D. The point of measurement shall be at the property boundary of the receiving property
- E. Enforcing authority: Neighborhood Services and Code Enforcement Department

10.08D.080 Commercial Noise

- A. All commercial noise is subject to the sound limits of 10.08D.070.
 - 1. Enforcing authority: Neighborhood Services and Code Enforcement Department.
- B. Exterior HVAC and Electrical Equipment.
 - 1. All exterior HVAC equipment and Electrical Equipment shall comply with the established noise levels as identified in WAC 173-60 and SMC 10.08D.070. Mechanical permits and electrical permits are required per SMC 17F.080.030 and 17F.050.020 prior to installation or replacement of such equipment. The permit application worksheet for new

or replacement equipment shall be completed with the specific information for each piece of equipment indicating compliance with noise levels, and for the onsite building inspector verification of compliance with the WAC and SMC at time of the inspection.

2. Enforcing authority: Building Department

10.08D.090 Public Disturbance Noise

- A. In addition to a sound that is unlawful under SMC 10.080D.050 and SMC 10.08D.070, it is unlawful for any person to knowingly cause or permit sound that is a public disturbance noise defined in SMC 10.08D.030 and refuse or intentionally fail to cease the noise when ordered to do so by a law enforcement officer. The content of the sound will not be considered in determining a violation.
- B. Public disturbance noises originating from real or personal property possessed or controlled by the person causing or permitting the public disturbance noise are prohibited at all times unless otherwise specified, and include but are not limited to the following sounds if the sound is clearly audible across a real property boundary, or fifty (50) feet from the source, whichever is less:
 1. The frequent, repetitive and/or continuous sounding of any horn, siren, or alarm attached to a motor vehicle, except when used as a warning of danger or as specifically permitted or required by law.
 2. The frequent, repetitive and/or continuous sounding outdoors of any emergency warning device where an actual emergency does not exist; provided, that sounds created during maintenance or testing of such emergency warning devices does not constitute a noise disturbance.
 3. The frequent, repetitive, and/or continuous sounds in connection with the starting, operation, repair, rebuilding, and/or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine.
 4. The frequent, repetitive, and/or continuous sounds, which emanate from real or personal property, such as sounds from audio equipment, television set, video equipment, musical instruments, band sessions and/or social gatherings.
 5. The frequent, repetitive and/or continuous sounds caused by operating or playing, or permitting the operating or playing, of motor vehicle audio equipment such as tape players, radios, and compact disc players, whether portable or stationary or mounted on or within a motor vehicle.
 6. The frequent, repetitive and/or continuous sounds caused by the use of fireworks or other blasting devices without the appropriate permit.

7. The frequent, repetitive and/or continuous yelling, shouting, whistling, singing, or other vocal noises on or near the public streets, between the hours of ten p.m. and seven a.m.

C. Public disturbance noises originating from a person or his personal property while on public property, or a public right-of-way, are prohibited at all times unless otherwise specified, and include, but are not limited to, the following sounds:

1. A person or performer creating a sound, whether amplified or unamplified, in such a manner as to cause public disturbance noise; or
2. A person or performer creating a sound, whether amplified or unamplified, between the hours of 10 p.m. and 7 a.m. so as to be plainly audible at the property line of any dwelling unit which is not the source of sound; or
3. A person or performer creating a sound, whether amplified or unamplified, on public property or on a public right-of-way so as to be plainly audible one hundred (100) feet or more from the source of the sound.
 - a. In addition to audibility at 100 feet, the enforcing authority shall use any or all of the following criteria to determine violation:
 - i. whether the sound is loud enough to cause vibration of building elements (i.e. rattling windows),
 - ii. the content of the sound, such as heavy bass frequencies,
 - iii. the background sound level at the location,
 - iv. the duration of the sound at a single location where the sound is audible,
 - v. the location and time of day.
4. The content of the activity shall not be considered in determining a violation.
5. The Police Department shall develop policy or standard operating procedure to address repeated filings of unfounded complaints by a single individual.

D. Enforcing authority: Police Department.

10.08D.100 Entertainment Facilities

- A. Entertainment Facilities, Adult Cabaret's, restaurants or bars serving alcohol, and Teen Clubs are prohibited from allowing sound between the hours of 10:00 p.m. and 7:00 a.m. as specified for permits issued under SMC 10.23A that is plainly audible to a person of normal sensibilities.
- B. Entertainment Facilities, Adult Cabarets, restaurants or bars serving alcohol, and Teen Clubs permitted under SMC 10.23A are prohibited from allowing sound that is plainly

audible to a person of normal sensibilities fifty (50) feet from the establishment. Doors to such facilities must remain closed during business hours.

- C. Entertainment Facilities which are granted a permit for outdoor entertainment are prohibited from allowing more than one hundred (100) feet from the facility to be plainly audible to a person with normal sensitivities.
- D. Enforcing authority: Police Department.

10.08D.110 Special Events Permits

- A. Activities and events which receive a Special Events Permit under SMC 10.39 are exempt from the provisions of this chapter, so long as the sounds are:
 - a. inherent in the specific activities described in the application for such permit;
 - b. caused or created at the location described in the application for such permit;
 - c. caused or created during the time periods described in the application for such permit; and
 - d. within the sound levels described in the application for such permit, or are at sound levels consistent with those inherent in the specific activities described in the application for such permit.
- B. Enforcing Authority: Police Department.

10.08D.120 Noise Variance

- A. A person may request a variance from compliance with this chapter by making an application with the director of public works and utilities at least 30 days before the time period for the variance is to take effect. The variance is limited to one-time activities that do not include concerts or permitted special events and entertainment facilities. The variance may not be used for private activities (weddings, parties etc). The applicant shall explain the:
 - 1. nature of the noise,
 - 2. source of the noise,
 - 3. duration for which the noise shall be created,
 - 4. time period for which the variance will be required,
 - 5. reason why the noise violation cannot be avoided, and
 - 6. mitigating conditions the applicant will implement to minimize the noise level violations.
- B. The application must be submitted at least thirty days before the time period the permit is to take effect. The director, after informing the affected City departments, may issue an excess noise permit if the director determines that the noise level violations:
 - 1. cannot be avoided,

2. will exist for a specific period of time,
 3. will not endanger public health, safety or welfare. and
 4. have been mitigated to the greatest extent reasonably possible.
- C. The director, after informing the affected City departments, may issue a variance from this chapter if the director determines that the noise level violations cannot be avoided, will exist for a specific period of time, and have been mitigated to the greatest extent reasonably possible. The director shall issue a written decision indicating the time period and location restrictions for the variance.
- D. The person obtaining such written variance must have the written variance posted in a viewable area or on their person when such variance takes place.
- E. A decision of the director of public works and utilities regarding a request for a variance may be appealed to the hearing examiner within ten days of the director's written decision.

10.08D.130 Affirmative Defense

It is an affirmative defense to any charge of a violation of this chapter that:

- A. the sounds at issue was created and/or caused during a period, at a location and at volume levels pursuant to the terms of a variance granted in accordance with the terms of exemptions set forth in SMC 10.08D.080; or
- B. the sounds at issue were caused or created pursuant to an approved special events permit issued under chapter 10.39 SMC, or activities authorized by any permit issued by the City of Spokane, so long as the sounds are:
 1. inherent in the specific activities;
 2. caused or created at the location specified in the permit;
 3. caused or created during the time periods allowed for by the permit; and
 4. within the sound levels described in the application for such permit, or are at sound levels consistent with those inherent in the specific activities described in the application for such permit.

10.08D.140 Violation – Penalty

- A. A violation of this chapter, except as noted in subsection B, shall be a misdemeanor, the maximum penalty for which shall be ninety days in jail or a fine of one thousand dollars, or both such fine and imprisonment.

- 1. Upon the first criminal conviction, the court shall impose a minimum mandatory fine of five hundred dollars, of which two hundred fifty dollars shall not be suspended or deferred.
 - 2. Upon a subsequent conviction, the court shall impose a minimum mandatory fine of seven hundred dollars, of which four hundred dollars shall not be suspended or deferred.
 - 3. Mandated minimums shall include statutory costs and assessments.
- B. The first violation of SMC 10.08D.080 or 17.08D.130 caused by sounds shall constitute a class 2 civil infraction. A second violation within a one year period shall be a misdemeanor pursuant to 10.08D.150(A).
- C. No person shall be cited under this chapter unless the person engaged in the prohibited conduct has been notified by a law enforcement officer that the conduct violates this chapter and has been given an opportunity to comply and has refused to comply. If the individual fails to comply, a law enforcement officer may than issue a citation under this section.

10.08D.150 Construction - Severability

- A. If any provision of this chapter, or its application to any person or circumstances, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter or the application of the provisions to other persons or circumstances.
- B. Nothing in this Chapter shall be construed as preventing the adoption of more restrictive provisions set forth in other sections of the Spokane Municipal Code. The more restrictive provisions of the code shall be enforced.

Section 2. That section 10.08.020 of the Spokane Municipal Code is repealed.

PASSED BY THE CITY COUNCIL ON _____, 2011.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Date

Mayor

Effective Date