

KEEPING IT QUIET: NOISE CONTROL ORDINANCES AND REGULATIONS

by

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INTRODUCTION

As in many areas of the State, the City of Port Townsend is experiencing rapid and extraordinary growth. Several years ago, the Chamber of Commerce undertook a major promotional effort to encourage tourism to the City. This has resulted in many tourists wanting to make Port Townsend their home. In doing so, the population has increased dramatically, and a number of the old buildings downtown have been restored and occupied with various uses, including hotels, motels and apartments. In addition, there is a large number of festivals and other entertainment events and facilities, which have increased in intensity with the increase of population.

The additional people and construction activity have created a number of legal and regulatory issues which the City has not seriously had to confront in the past. One of them is the resulting noise and its effects on residents and visitors alike.

I. IDENTIFY THE NOISE PROBLEM

A. Complaints

Like many issues, recognition of a noise problem often starts with citizen complaints that mushroom into an organized citizens group of sorts. In Port Townsend, several old buildings downtown, for example, were restored and opened as hotels and apartments. In addition, there is a number of existing apartment units throughout many of the downtown buildings with many more people residing permanently downtown than anyone had recognized.

There is also the traditional downtown activity, as well as some unique to Port Townsend. Several taverns and cocktail lounges provide dance music; young people cruise the streets visiting or looking for additional friends and action; and a number of community events are held throughout the year in or around the downtown area which result in increased pedestrian and vehicular traffic, music, some disorderly behavior and various other noises into the evening. Many complaints have been made of simply loud talking down on the sidewalks and street corners.

A number of cities has recently had problems with vehicle and hand-carried stereos, radios and similar equipment. There have been only a few complaints of this thus far in Port Townsend, and most of these have occurred during daytime hours.

B. Public Meetings

In Port Townsend we found it somewhat useful to hold public meetings with the individuals making the complaints to determine

the extent of the problem. In doing so, we learned of many of the types of noises which occur and how they affect the people who live and work downtown. We have not found a problem to exist throughout the remainder of the City, except for an infrequent weekend party or hot-rodder getting out of control. Most of the noises complained of occur at night. General commercial, business and construction activity has not been an ongoing problem.

The persons most affected by downtown noise have been tourists staying in downtown overnight facilities and the owners and operators of those facilities. Several operators have received a number of written complaints from their guests. A few downtown residents have complained, but a relatively small number compared to the number of people occupying downtown units. Interestingly, we found a number of people living or operating a business downtown who did not perceive a problem or who thought it was simply part of the "character" of the downtown.

II. SOLUTIONS TO NOISE PROBLEMS

A. Traditional Regulations

Zoning regulations in most cities, including Port Townsend, have prevented most noise problems by not allowing them to occur in the first place. Industrial, commercial and industrial activity for the most part is separated into different parts of cities.

Noise problems have been most intense in the downtown commercial area where a mixture of uses is permitted, such as taverns/ cocktail lounges on the one hand and transient sleeping units on the other. Port Townsend may be somewhat unique in this regard due to the large number of 19th Century brick buildings located throughout the downtown area and the desire of the community to preserve this part of the City's history. For years, many of those buildings stood vacant and particularly the upper floors. With the influx of people interested in being a part of the City's history and owning one of those buildings, it has been necessary to try to economically use all of the space.

Many of the upper floors were originally designed for hotel rooms, apartments or office spaces. In contrast, the City also has a history of downtown bars and taverns with music and dancing. Although zoning regulations have prevented most noise conflicts, the situation downtown has been allowed to occur and has been the center of most noise complaints. A city should try to anticipate this problem, and it might possibly be dealt with by adequate zoning controls.

Other traditional regulations which have the effect of controlling noise to varying degrees have been public nuisance laws, motor vehicle regulations and laws against disorderly conduct and disturbance of the peace. Certainly, these control and prevent many noises, but they have not prevented a number of noises described above.

B. Current Regulatory Approaches

1. Noise Control Act

The State Legislature passed the Noise Control Act in 1974 (see RCW 70.107, along with rules at WAC 173-60 and 173-62). An excellent paper discussing the statute in detail was previously written by Ross A Radley, a former assistant City Attorney of Seattle, entitled Noise Ordinance Administration and Enforcement, as published in Proceedings, WSAMA, June 1981. I would refer the reader to that article, which can be obtained from the Municipal Research and Services Center, as well as to the statute and regulations for detail; note that the statute has been amended since the article was published.

Generally, the regulations set forth different zones with various types of noises and noise levels permitted as measured in decibels. Enforcement is to be done by the State Department of Ecology (DOE) and requires the use of sound metering equipment. A number of cities has adopted ordinances based on the State Act. In addition, the statute requires that most noise control ordinances which differ from the statute must first be reviewed and approved by DOE. However, if a proposed ordinance is submitted to DOE, and DOE does not act within 90 days, the ordinance is deemed to be approved. I have been advised that, due to the lack of personnel and funding, DOE is not able to review many proposed ordinances within the applicable time period.

The advantages of this regulatory approach include the objective standards by which noise can be measured, and the use of

equipment to be able to measure and compare noises and prove violations.

However, a number of disadvantages has led some cities to either abandon or supplement this approach. The sound measuring equipment is expensive, requires officer training in the use of it, and does not provide any flexibility. More significantly, the officer must respond to a complaint and be able to measure the noise with the equipment. In Port Townsend we have found that most noise which results in a complaint has dissipated by the time the officer arrives on the scene. Consequently, many cities including Port Townsend have considered replacing such regulations or supplementing them with a more generally worded ordinance prohibiting certain public disturbance noises.

2. Public Disturbance Noise Ordinances

This type of ordinance prohibits any person from causing or allowing to originate from his property any "public disturbance noise."

The ordinance then typically defines a number of different noises and disturbances as "public disturbance noise," such as noises pertaining to revving of vehicle engines; horns and sirens; yelling or singing at certain places or during certain hours; continuous noises from property or buildings such as music, audio sound systems and stereos; motor vehicle radios and stereos; construction sites during certain hours; temporary home projects at certain hours; and so forth. Some require that a

certain number of people be unreasonably disturbed; others prohibit certain noises which can be heard beyond a certain distance.

The ordinance may provide for exceptions, such as for aircraft, safety devices, fire alarms, emergency vehicles and organized parades.

The ordinance will then set forth penalties for violations. Some make violations a civil infraction; others declare a violation or a second or subsequent violation as a criminal misdemeanor.

Finally, the ordinance should include a severability provision and an effective date, which takes into account prior DOE approval.

Perhaps more common under ordinances based upon the Noise Control Act but also pertinent to a public disturbance noise ordinance would be a variance procedure, to permit noise otherwise prohibited in certain circumstances not anticipated during preparation of the ordinance. Normally, this would be short-term, commercial or construction activity of some sort.

The advantage to these types of ordinances include the ability to not have to use sound measuring devices, greater flexibility, and the ability to enforce by way of citizen witnesses who may actually witness the noise rather than simply an officer with a machine or otherwise who may arrive at the scene late.

On the other hand, such ordinances would most commonly be attacked as void for vagueness or violating free speech guarantees, particularly if enforcement is sought against voice noise.

In preparing any ordinance, the reader should carefully review the Court cases Seattle v. Eze 111 Wn2d 22, 759 P2d 366 (1988); Spokane v. Fischer 110 Wn2d 541, 754 P2d (1988); and Everett v. O'Brien 31 Wn App 319, 641 P2d 714 (1982). The prohibited noise should be defined in relation to that which unreasonably disturbs several people and not just an individual Seattle v. Eze, supra; and the ordinance can be written in terms of a reasonableness standard so that it will fairly define and give persons adequate notice of the prohibited conduct. Compare Spokane v. Fischer, supra (ordinance invalid), with Everett v. O'Brien, supra, and Seattle v. Eze (ordinances upheld).

Finally, such an ordinance must be sent to DOE for review. Presently, it is my understanding that this creates no problem. The reader should consult with DOE at the time and review the Noise Control Act at the time with respect to the process and procedure.

An additional type of ordinance which, however, is rarely used designates "quiet zones." Normally, this would apply in areas where there may be hospitals and similar facilities and may only apply at certain hours.

III. ENFORCEMENT

Perhaps the experience in other cities has been different, but in Port Townsend we have found enforcement to be a major problem in preventing disturbing noises, and we anticipate the problem to continue with respect to certain noises after passage of a new ordinance.

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For example, a common complaint is of tourists trying to sleep in a downtown hotel within two blocks of a tavern providing dance music on a hot summer night when doors and/or windows of both establishments are open. Both are permitted uses in that commercial zone. The responding officer often finds the music not to be offensive or might ask the tavern proprietor to have the music turned down. It may not happen again for several weeks, but this does not help the restless tourist trying to sleep. In addition, patrons leaving the establishment at 2:00 a.m. often talk and chatter on street corners on their way to their vehicles, or a fight may break out on some occasions. With rare exceptions, the disturbance is gone by the time an officer arrives.

Screeching tires through downtown or up one of the hills from the downtown area might be heard and wake someone up. However, the officers on duty are rarely in the area at the right time, or a driver may not be identifiable.

In addition, many of the complaints come from tourists on their way back to California or Montana or some other such place and are not available for a civil infraction hearing or misdemeanor trial.

However, this should not discourage a city from attempting to draft and pass an ordinance which endeavors to deal with these problems in a reasonable way. We have found, with other regulations, and some cities have found with such a noise ordinance that passage of the ordinance and public education

about it act as a deterrent to the prohibited conduct. Further, the ordinance is then available to deal with the worst or most persistent cases. Finally, it gives the enforcing officer something to work with to attempt to prevent or abate disturbances by warnings of possibility of prosecution.

Since we received a number of noise and disturbance complaints, the police department has attempted to undertake more frequent foot patrol of the downtown area during the late evening hours. This has appeared to help on some occasions, if for no other reason than simply deterrence. It appears that foot patrol by officers together with a public disturbance noise ordinance will be the most effective means of curbing noises for the time being.

We also realize that all disturbing noises cannot be prevented.

IV. OTHER REFERENCES

In researching the problem and preparation of ordinances, it is recommended that copies of correspondence, articles and sample ordinances be obtained from the Municipal Research and Services Center. As always, they have good material and patient and helpful staff. I would also suggest consulting some of the city attorneys who have prepared or tried to enforce these ordinances. They, too, are extremely helpful.

There are not a lot of Court cases dealing with noise control in Washington, the three cited in this paper being the

most recent and helpful. The following material might assist in obtaining background or other case references: Washington Digest, under "Health and Environment" and under "Nuisance"; ALR3rd-4th Quick Index, under "Noise Pollution" and under "Nuisance"; 56 AmJur2nd Municipal Corporations; 61 AmJur2nd Pollution Control; and McQuillan, Municipal Corporations, Chapter 24.