

ORDINANCE _____

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2 AN ORDINANCE relating to noise control, adding new Sections 25.08.068, 25.08.221,
3 25.08.501, 25.08.890, 25.08.900, 25.08.910, 25.08.915, 25.08.920, 25.08.930, 25.08.940,
4 25.08.950, 25.08.960, and 25.08.970 and directing the Executive to promulgate by rule
noise standards consistent with sound level units of measurement prescribed by Council.

5 WHEREAS, Seattle has a vibrant and active nightlife culture that contributes to the economic
6 and cultural vitality of the City; and

7 WHEREAS, urban centers and hub urban villages have become increasingly characterized by
8 mixed use development with residential uses in close proximity to commercial and
entertainment uses; and

9 WHEREAS, it is important to balance the needs of residents in urbanizing areas for quiet
10 enjoyment of their homes with the needs of entertainment establishment owners who
11 operate businesses that make urbanizing areas exciting and desirable places to live; and

12 WHEREAS, as written, public disturbance noise provisions of the Noise Ordinance are
13 cumbersome and difficult to enforce; NOW, THEREFORE,

14 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

15 Section 1. A new Section 25.08.068 is added to the Seattle Municipal Code to read as
16 follows:

17 **25.08.068 Amplified Noise**

18 “Amplified Noise” means noise that is increased by electronic means.

19 Section 2. A new Section 25.08.105 is added to the Seattle Municipal Code to read as
20 follows:

21 **25.08.221 Receiving Dwelling unit**

22 “Receiving Dwelling unit” is a dwelling unit as defined in Section 23.84A.008 and
23 within which sound originating from sources outside the dwelling unit is received.
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25 Section 3. A new Section 25.08.501 is added to the Seattle Municipal Code to read as
26 follows:
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1 **25.08.501 Nightlife disturbance** A. It is unlawful for any person in possession of real
2 property, other than residential property, to allow to originate from that property between the
3 hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person
4 of normal hearing when measured inside a receiving dwelling unit.

5 B. It is an affirmative defense to any proceeding arising under this section that the
6 receiving dwelling unit was unoccupied at the time of the violation.

7 C. The Administrator shall promulgate by rule a standard for amplified noise plainly
8 audible to a person of normal hearing which can be measured using a sound level meter.

9 Section 4. A new Section 25.08.890 of the Seattle Municipal Code is adopted to read as
10 follows:
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12 **25.08.890 Warning for Nightlife disturbance violations**

13 If after investigation the Administrator determines that the provisions of Section
14 25.08.501 have been violated, the Administrator may issue a citation, but only if a written
15 warning has been issued to the person by the City within the previous three hundred and sixty
16 five (365) days. A warning shall be served upon the persons responsible for the condition or
17 violation by personal service or by first class mail, addressed to the person's last known address.
18 If the address of the responsible person is unknown and cannot be found after a reasonable
19 search, the warning may be served by posting a copy at a conspicuous place on the property
20 where the violation occurred. If a warning is directed to a person responsible for the violation
21 who is not the owner of the property where the violation is occurring, a copy of the warning may
22 be sent to the owner of the property. The warning is effective on the earliest date of: the date of
23 personal service, the date of posting, three days after mailing by the City, or the day the notice is
24 actually received.
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1 Section 5. A new Section 25.08.900 of the Seattle Municipal Code is adopted to read as
2 follows:

3 **25.08.900 Citation**

4 A. Citation. The citation shall include the following information:

- 5 1. The name and address of the person to whom the citation is issued;
- 6 2. A reasonable description of the location of the property on which the violation
7 occurred;
- 8 3. A separate statement of each requirement or provision of the Chapter violated;
- 9 4. The date of the violation;
- 10 5. A statement that the person cited must respond to the citation within fifteen
11 (15) days after service;
- 12 6. A space for entry of the applicable penalty;
- 13 7. A statement that a response must be received at the Office of Hearing Examiner
14 not later than five p.m. on the date the response is due;
- 15 8. The name, address and phone number of the Office of Hearing Examiner where
16 the citation is to be filed;
- 17 9. A statement that the citation represents a determination that a violation has
18 been committed by the person named in the citation and that the determination shall be final
19 unless contested as provided in this chapter; and
- 20 10. A certified statement of the person issuing the citation, authorized by RCW
21 9A.72.085, setting forth facts supporting issuance of the citation.

22 B. Service. The citation may be served by personal service in the manner set forth in
23 RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known
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1 address of such person(s). Service shall be complete at the time of personal service, or if mailed,
2 on the date of mailing. If a citation sent by first class mail is returned as undeliverable, service
3 may be made by posting the citation at a conspicuous place on the property on which the
4 violation occurred.

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6 Section 6. A new section 25.08.910 of the Seattle Municipal Code is adopted to read as
7 follows:

8 **25.08.910 Response to citations.**

9 A. A person must respond to a citation in one (1) of the following ways:

10 1. Paying the amount of the monetary penalty specified in the citation, in which
11 case the record shall show a finding that the person cited committed the violation; or

12 2. Requesting in writing a mitigation hearing to explain the circumstances
13 surrounding the commission of the violation and providing a mailing address to which notice of
14 such hearing may be sent; or

15 3. Requesting a contested hearing in writing, specifying the reason why the cited
16 violation did not occur or why the person cited is not responsible for the violation, and providing
17 a mailing address to which notice of such hearing may be sent.
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20 B. A response to a citation must be received by the Office of the Hearing Examiner no
21 later than fifteen (15) days after the date the citation is served. When the last day of the appeal
22 period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until
23 five p.m. on the next business day.
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25 Section 7. A new section 25.08.915 of the Seattle Municipal Code, is adopted to read as
26 follows:
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25.08.915 Voluntary mitigation and waiver of initial penalty for nightlife

disturbance violations

For violations of Section 25.08.501 only, the Administrator may waive the penalty for the first violation if, within fifteen (15) days of the date of the citation, the respondent admits liability for the violation and elects, in a manner prescribed by rule, to provide permanent improvements or modifications that are reasonably likely to prevent future violations, which may include, but not be limited to, installation of sound insulation, isolators, suspension mounting or other sound mitigating measures. To be eligible for waiver, these improvements must be installed and approved by the Administrator within ninety (90) days of the citation.

Section 8. A new section 25.08.920 of the Seattle Municipal Code, is adopted to read as follows:

25.08.920 Failure to respond.

If a person fails to respond to a citation within fifteen (15) days of service, an order shall be entered by the Hearing Examiner finding that the person cited committed the violation stated in the citation, and assessing the penalty specified in the citation.

Section 9. A new Section 25.08.930 of the Seattle Municipal Code is adopted to read as follows:

25.08.930 Mitigation hearings.

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within thirty (30) days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent by first class mail to the address provided in the request for hearing not less than ten (10) days prior to the date of the hearing.

1 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing, which
2 shall not be governed by the Rules of Evidence. The person cited may present witnesses, but
3 witnesses may not be compelled to attend. A representative of the Administrator may also be
4 present and may present additional information, but attendance by a representative of the
5 Administrator is not required.

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7 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
8 justifies reduction of the monetary penalty; however, the monetary penalty may not be reduced
9 unless the Administrator affirms or certifies that the violation has been corrected prior to the
10 mitigation hearing. Factors that may be considered in whether to reduce the penalty include
11 whether the violation was caused by the act or neglect of another; or whether correction of the
12 violation was commenced promptly prior to citation but that full compliance was prevented by a
13 condition or circumstance beyond the control of the person cited.
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15 D. Entry of Order. After hearing the explanation of the person cited and any other
16 information presented at the hearing, the Hearing Examiner shall enter an order finding that the
17 person cited committed the violation and assessing a monetary penalty in an amount determined
18 pursuant to this section. The Hearing Examiner's decision is the final decision of the City on this
19 matter.
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21 Section 10. A new section 25.08.940 of the Seattle Municipal Code, is adopted to read as
22 follows:
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24 **25.08.940 Contested case hearing.**

25 A. Date and Notice. If a person requests a contested case hearing, the hearing shall be
26 held within sixty (60) days after the written response to the citation requesting such hearing is
27 received.
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1 B. Hearing. Contested case hearings shall be conducted pursuant to the procedures for
2 hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
3 Examiner for hearing contested cases, except as modified by this section. The issues heard at the
4 hearing shall be limited to those raised in writing in the response to the citation and that are
5 within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for
6 the attendance of witnesses and the production of documents.
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8 C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed
9 statement of the facts constituting the specific violation which the person cited is alleged to have
10 committed or by reason of defects or imperfections, provided such lack of detail, or defects or
11 imperfections do not prejudice substantial rights of the person cited.
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13 D. Amendment of Citation. A citation may be amended prior to the conclusion of the
14 hearing to conform to the evidence presented if substantial rights of the person cited are not
15 thereby prejudiced.
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17 E. Evidence at Hearing. The certified statement or declaration authorized by RCW
18 9A.72.085 submitted by a representative of the Administrator shall be prima facie evidence that a
19 violation occurred and that the person cited is responsible. Any certifications or declarations
20 authorized under RCW 9A.72.085 shall be admissible without further evidentiary foundation.
21 The person cited may rebut the evidence and establish that the cited violation(s) did not occur or
22 that the person contesting the citation is not responsible for the violation.
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24 F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter
25 an order finding that the person cited committed the violation and shall impose the applicable
26 penalty. If the Hearing Examiner determines that the violation did not occur, the Hearing
27 Examiner shall enter an order dismissing the citation.
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1 G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any
2 judicial review must be commenced within twenty-one (21) days of issuance of the Hearing
3 Examiner's decision in accordance with RCW 36.70C.040.

4 Section 11. A new Section 25.08.950 of the Seattle Municipal Code, is adopted to read
5 as follows:

6 **25.08.950 Failure to appear for hearing.**

7 Failure to appear for a requested hearing will result in an order being entered finding that
8 the person cited committed the violation stated in the citation and assessing the penalty specified
9 in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the
10 Hearing Examiner may set aside an order entered upon a failure to appear.
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12 Section 12. A new Section 25.08.960 of the Seattle Municipal Code, is adopted to read
13 as follows:

14 **25.08.960 Citation Penalties**

15 A person found to have violated Section 25.08.501 is subject to a penalty according to the
16 following schedule.
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Citation Penalty Schedule		
Section or Subsection Violated	First Violation	Second and Subsequent Violations
25.08.501	\$1000	\$2000

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23 Section 13. A new Section 25.08.970 of the Seattle Municipal Code, is adopted read as
24 follows:

25 **25.08.970 Each day a separate violation.**

1 Each day a person violates or fails to comply with the provisions of this chapter for which
2 a citation may be issued may be considered a separate violation for which a citation may be
3 issued and for which penalties may be imposed.

4 Section 14. The enforcement provisions contained in Sections 25.08.900-25.08.970 of
5 this ordinance apply to all enforcement actions commenced on or after the effective date of this
6 ordinance, regardless of when the violation occurred. To this extent, this
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1 ordinance applies retroactively, but in all other respects it applies prospectively.

2 Section 15. The provisions of this ordinance are declared to be separate and severable.
3 The invalidity of any particular provision shall not affect the validity of any other provision.

4 Section 16. The City Council directs that the Administrator promulgate rules to
5 implement this ordinance. Such rules shall include definitions of or implementation procedures
6 for determining “plainly audible to a person of normal hearing” and “when measured inside a
7 receiving dwelling unit”. Such rules shall also, among other things, set threshold dB(A) levels
8 and threshold dB(C) levels, measured as an increase in the sound level above the ambient noise
9 level, for violations of Section 25.08.501. The rules may include different threshold levels for
10 areas that are zoned to allow a variety of land uses in close proximity to residential uses. The
11 rules may also include procedures for measuring sound levels to determine if a violation has
12 occurred. These rules shall be developed in consultation with the Nightlife Advisory Board and
13 shall be effective no later than June 1, 2008.

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16 Section 17. Sections 1, 2, 3, 4, 7 and 12 of this ordinance shall take effect and be in force
17 on whichever is the later of June 1, 2008 or the effective date of approval of the amendments in
18 this ordinance by the Washington State Department of Ecology, which date is not later than
19 ninety (90) days after submittal to the Department of Ecology. The remaining provisions of this
20 ordinance shall take effect and be in force on whichever is the later of: (a) the effective date of
21 approval of the amendments in this ordinance by the Washington State Department of Ecology,
22 which date is not later than ninety (90) days after submittal to the Department of Ecology; or (b)
23 thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the
24 Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code
25 Section 1.04.020.
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Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this ____ day of _____, 2007.

President _____ of the City Council

Approved by me this ____ day of _____, 2007.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

City Clerk

(Seal)