

NO. 83343-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

HELEN D. IMMELT,

Petitioner.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2010 JAN 19 AM 7:54
BY RONALD R. CENTER
CLERK

SUPPLEMENTAL BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

CHARLES F. BLACKMAN
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

TABLE OF CONTENTS

I. SUPPLEMENTAL ARGUMENT 1

A. OVERBREADTH CHALLENGE..... 1

1. Facial Overbreadth Challenges In General; Standing 1

2. Focus Of Supplemental Briefing..... 3

3. Because It Regulates Conduct, Does Not Regulate Spoken Words Or Patently Expressive Conduct, And Because Any Alleged Overbreadth Is Incidental Rather Than Real and Substantial, The Ordinance Is Not Unconstitutional On Its Face. 4

II. CONCLUSION 17

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>Holland v. Tacoma</u> , 90 Wn. App. 533, 954 P.2d 290, <u>review denied</u> , 136 Wb.2d 1015 (1998) (1998)	2, 3, 12
<u>Kitsap County v. Mattress Outlet/Gould</u> , 153 Wn.2d 506, 104 P.3d 1280 (2005).....	16
<u>O'Day v. King County</u> , 109 Wn.2d 796, 749 P.2d 142 (1988) 2, 4, 5, 16	
<u>Seattle v. McConahy</u> , 86 Wn. App. 557, 937 P.2d 1133 (1997)..	2, 3
<u>State v. Boyd</u> , 137 Wn. App. 910, 155 P.3d 188 (2007).....	1
<u>State v. Immelt</u> , 150 Wn. App. 681, 208 P.3d 1256 (2009)2, 3, 4, 15	
<u>State v. Regan</u> , 97 Wn.2d 47, 640 P.2d 725 (1982).....	5
<u>Tacoma v. Luvene</u> , 118 Wn.2d 826, 827 P.2d 1324 (1992) 1, 11, 16	

FEDERAL CASES

<u>Broadrick v. Oklahoma</u> , 413 U.S. 601, 93 S. Ct. 2908, 2915-16, 37 L. Ed. 2d 830 (1973)	1, 7, 11
<u>City of Dallas v. Stanglin</u> , 490 U.S. 19, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989).....	11
<u>City of Lakewood v. Plain Dealer Publ'g Co.</u> , 486 U.S. 750, 108 S. Ct. 2138, 2145, 100 L. Ed. 2d 771 (1988).....	2, 7, 10
<u>Colten v. Kentucky</u> , 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972).....	8
<u>Goedert v. City of Ferndale</u> , 596 F.Supp.2d 1027 (E.D. Mich., 2008)	15
<u>Grayned v. Rockford</u> , 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).....	12, 13
<u>Meaney v. Dever</u> , 326 F.3d 283 (1st Cir. 2003)	10
<u>New York v. Ferber</u> , 458 U.S. 747, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982).....	14
<u>R.A.V. v. City of St. Paul</u> , 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992).....	10
<u>Roulette v. City of Seattle</u> , 97 F.3d 300 (9th Cir.1996).....	1, 2, 7, 10
<u>Spence v. Washington</u> , 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).....	7
<u>Texas v. Johnson</u> , 491 U.S. 397, 109 S. Ct. 1702, 2533, 105 L. Ed. 2d 342 (1989).....	3, 15
<u>United States v. O'Brien</u> , 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968).....	9

<u>Ward v. Rock Against Racism</u> , 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)	8, 9, 13
--	----------

OTHER CASES

<u>City of Eugene v. Powlowski</u> , 116 Or. App. 186, 840 P.2d 1322 (Or. 1992)	14, 15
<u>People v. Holt</u> , 271 Ill.App.3d 1016, 208 Ill.Dec. 515, 649 N.E.2d 571 (Ill. 1995)	8
<u>State v. Compas</u> , 290 Mont. 11, 964 P.2d 703 (Mont. 1998)	2, 8

U.S. CONSTITUTIONAL PROVISIONS

First Amendment.....	8, 9, 10, 12
----------------------	--------------

WASHINGTON STATUTES

RCW 46.37.380(1)	5
RCW 46.61.245.....	9

OTHER AUTHORITIES

SCC 10.01.010(1)	6, 7
SCC 10.01.020(25)	6, 8, 10
SCC 10.01.030.....	6
SCC 10.01.040.....	6
SCC 10.01.040(1)	6
SCC 10.01.040(1)(d).....	6, 10
SCC 10.01.040(2).....	6
SCC 10.01.080(3)	6, 7, 10

I. SUPPLEMENTAL ARGUMENT

A. OVERBREADTH CHALLENGE.

1. Facial Overbreadth Challenges In General; Standing.

A law or ordinance will be unconstitutionally overbroad if it sweeps within its prohibitions constitutionally protected free speech activities. State v. Boyd, 137 Wn. App. 910, 921, 155 P.3d 188 (2007) (upholding statute criminalizing voyeurism against overbreadth challenge), citing Tacoma v. Luvene, 118 Wn.2d 826, 839, 827 P.2d 1324 (1992) (upholding drug-loitering ordinance, as limited and construed, against overbreadth challenge). However, the United States Supreme Court has entertained facial overbreadth challenges “only against statutes that, ‘by their terms,’ sought to regulate ‘spoken words,’ or patently ‘expressive or communicative conduct’ such as picketing or handbilling.” Roulette v. City of Seattle, 97 F.3d 300, 303 (9th Cir.1996) (upholding Seattle’s anti-sitting/lying-down ordinance against overbreadth challenge) (quoting Broadrick v. Oklahoma, 413 U.S. 601, 612-13, 93 S. Ct. 2908, 2915-16, 37 L. Ed. 2d 830 (1973) (upholding limits on state civil servants’ political activity against overbreadth challenge)). “[A] facial freedom of speech attack must fail unless, at a minimum, the challenged statute ‘is directed narrowly and

specifically at expression or conduct commonly associated with expression.” Roulette, 97 F.3d at 305 (quoting City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 760, 108 S. Ct. 2138, 2145, 100 L. Ed. 2d 771 (1988) (striking down statute giving mayor unbridled discretion over where and whether to permit newsracks)). Mere conduct is not expressive, and legislation may restrict it. Holland v. Tacoma, 90 Wn. App. 533, 539, 954 P.2d 290, review denied, 136 Wb.2d 1015 (1998) (1998) (upholding noise ordinance against facial challenge); O'Day v. King County, 109 Wn.2d 796, 803, 749 P.2d 142 (1988) (upholding nude dancing ordinance against overbreadth challenge, after limiting its construction); Seattle v. McConahy, 86 Wn. App. 557, 567, 937 P.2d 1133 (1997) (post-Roulette, upholding Seattle’s anti-sitting/lying-down ordinance against overbreadth challenge).

The Court of Appeals reasoned, correctly, that “[h]orn honking which is done to annoy or harass others is not speech.” State v. Immelt, 150 Wn. App. 681, 687, 208 P.3d 1256 (2009) (citing State v. Compas, 290 Mont. 11, 964 P.2d 703, 706 (Mt. 1998) (conviction for disorderly conduct upheld where defendant sounded loud continuous blasts when passing RV park she considered an eyesore). The petitioner counters she was engaged

in “speech,” *but that is not what she told police at the time.* Immelt, 150 Wn. App. at 687-88; see McConahy, 86 Wn. App. at 567 (facts supported by substantial evidence not disturbed on appeal). Because the petitioner had not engaged in “speech,” the Court of Appeals affirmed her conviction, mere conduct being within a government’s power to regulate or restrict. Id.; see Holland v. Tacoma, 90 Wn. App. at 539.

2. Focus Of Supplemental Briefing.

Litigation below addressed whether, under the standards articulated above, a person challenging an ordinance or statute for overbreadth must first make a threshold showing of having engaged in some sort of “speech” or expressive conduct, or whether he or she may bring a challenge based on hypotheticals, the standards then determining whether that challenge fails. Since petitioner had not engaged in “speech,” respondent in briefing below argued the former. BOR at 14-22 (citing *inter alia Texas v. Johnson*, 491 U.S. 397, 402 n.3, 404, 109 S. Ct. 1702, 2533, 105 L. Ed. 2d 342 (1989) (“[i]n deciding whether particular conduct possesses sufficient communicative elements . . . we have asked whether an intent to convey a particularized message was present, and whether the likelihood was great that the message would be

understood by those who viewed it,” context of flag burning; internal quotations omitted)). The Court of Appeals agreed with respondent, concluding the petitioner’s conduct did not convey such a “particularized message” and therefore was not “speech.” Immelt, 150 Wn. App. at 686-88. Respondent believes the standing issue is adequately addressed in the briefing and decision below, and is correctly decided. It does not repeat those arguments here. But assuming this Court disagrees – that is, assuming either no showing of “speech” or “expressive conduct” need be made, or assuming petitioner’s conduct sufficiently comprises “speech” to make this showing – the petitioner’s overbreadth challenge still fails.

3. Because It Regulates Conduct, Does Not Regulate Spoken Words Or Patently Expressive Conduct, And Because Any Alleged Overbreadth Is Incidental Rather Than Real and Substantial, The Ordinance Is Not Unconstitutional On Its Face.

It is true that a person may challenge an ordinance or regulation as overly broad, even though his or her “activity is within the permissible scope of the [ordinance] and even if such constitutional overbreadth can be considered ‘harmless error’ as applied to them,” *but only* if the ordinance or regulation impermissibly burdens protected expression. O’Day v. King

County, 109 Wn.2d at 803, citing State v. Regan, 97 Wn.2d 47, 52, 640 P.2d 725 (1982) (prosecuting for sale of obscene materials reversed, because “patently offensive” not included in “obscenity” definition). Petitioner claims the ordinance impermissibly burdens protected expression, and that she therefore may bring an overbreadth challenge even though her conduct fell within the permissible scope of the ordinance. She is mistaken.

It is revealing to look at the medium the petitioner chose. A vehicle horn is a device *designed to be loud*: It is required equipment on motor vehicles in this state, and must be audible under normal conditions from a distance of not less than 200 feet, that is, for not less than two-thirds the length of a football field. RCW 46.37.380(1). It is a “warning device” intended to give “audible warning.” Id. Its expressive qualities, as some sort of communicative device, are thus necessarily quite limited. A horn is designed to “say” only one thing, and that quite loudly. On the other hand, by its very design it possesses a high degree of disturbance or annoyance potential.

The purpose of Snohomish County's noise control ordinance is

to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the express intent of the county to control the level of noise in a manner which promotes the use, value and enjoyment of property; sleep and repose; commerce; and the quality of the environment.

SCC 10.01.010(1).¹ To promote these purposes, it is unlawful for any person to cause or allow “sound that is a ‘public disturbance noise.’” SCC 10.01.040.

“Public disturbance noise” means any sound which, because of its random or infrequent occurrence, is not conducive to measurement under the quantitative standards established in SCC 10.01.030; and endangers or injures the safety or health of humans or animals, or endangers or damages personal or real property, or annoys, disturbs or perturbs any reasonable person of normal sensitivities, or is specifically included in those listed in SCC 10.01.040(1) or 10.01.040(2).

SCC 10.01.020(25). Per SCC 10.01.040(1)(d), a public disturbance noise includes, “[t]he sounding of vehicle horns for purposes other than public safety.” SCC 10.01.040(1)(d). It is a civil infraction to violate SCC 10.01.040 and a misdemeanor to commit a second infraction within a 24 hour period. SCC 10.01.080(3).

¹ The relevant Snohomish County Code provisions are attached.

There is nothing in this legislative scheme that by its terms, seeks to regulate “spoken words” or “patently expressive or communicative conduct such as picketing or handbilling.” See Roulette, 97 F.3d at 303; Broadrick, 413 U.S. at 612-13. Nor is it “directed narrowly and specifically at expression or conduct commonly associated with expression.” See Roulette, 97 F.3d at 305 (quoting Lakewood, 486 U.S. at 760). Nor does the county ordinance prohibit “symbolic speech” – nonverbal “activity sufficiently imbued with elements of communication” – such as affixing a peace sign to an American flag, found, not surprisingly, to be protected “symbolic speech” in Spence v. Washington, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).

Rather, Snohomish County simply seeks to restrict the use of car horns to their deliberately-loud, traffic safety purpose. Its ordinance reflects valid time, place and manner restrictions, for example, in providing that the first violation is only an infraction, and is criminalized only when engaged in twice in a 24-hour period. SCC 10.01.080(3). The ordinance’s purpose is, among other things, to promote “the use, value and enjoyment of property; sleep and repose; commerce; and the quality of the environment.” SCC 10.01.010(1). To further that purpose, it prohibits a “public

disturbance noise” that, among other things, “annoys, disturbs or perturbs any reasonable person of normal sensitivities.” SCC 10.01.020(25). *This reflects a legitimate and important government interest:* Conduct intended to embarrass, annoy, or harass is not protected “speech,” and lies within a government’s power to proscribe. State v. Compas, 290 Mont. 11, 964 P.2d 703, 706 (Mont. 1998) (context of horn-honking); People v. Holt, 271 Ill.App.3d 1016, 208 Ill.Dec. 515, 525, 649 N.E.2d 571, 581 (Ill. 1995) (context of stalking behavior), (citing Colten v. Kentucky, 407 U.S. 104, 109-11, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972) (context of disorderly conduct prosecution; holding that actions taken solely to annoy and inconvenience are not given constitutional protection, rejecting both as-applied and overbreadth challenges)). “[I]t can no longer be doubted that government has a substantial interest in protecting its citizens from unwelcome noise.” Ward v. Rock Against Racism, 491 U.S. 781, 796, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989).

An important governmental interest in regulating nonspeech, such as that here, can justify incidental limitations on First Amendment freedoms, even when speech and nonspeech elements are combined in the same course of conduct, if it meets

the four-part test in United States v. O'Brien, 391 U.S. 367, 376-77, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968) (burning draft card is expressive conduct but not protected).

[A] government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

O'Brien, 391 U.S. at 377. The ordinance here meets all four prongs of the O'Brien test: an anti-noise ordinance is within the constitutional power of local government; it furthers a substantial government interest (see Rock Against Racism, 491 U.S. at 796); that governmental interest (to protect from unwelcome noise) is unrelated to the suppression of free expression; and any incidental restriction is no greater than is essential to the furtherance of that interest.

A horn is a safety device, not a communications device. It is designed to warn of an imminent collision. See RCW 46.61.245 (“every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary”). Whenever a horn is used for

something else, its potential to warn is diluted. It furthers a legitimate government interest, then, to restrict an automobile horn's use to traffic warnings, just as a government can forbid setting off a fire alarm unless there's a fire.

The ordinance here is content-neutral, and leaves untouched other far more expressive and effective means of communication, such as leafleting, demonstrating, or holding signs. SCC 10.01.020(25), 10.01.040(1)(d), 10.01.080(3); see Roulette, 97 F.3d at 303-304 (nothing in challenged city ordinance prohibited rallies or handbilling); see R.A.V. v. City of St. Paul, 505 U.S. 377, 382, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) (but content-based regulations are presumptively invalid). "Blasting an air horn is qualitatively different from more readily understood expressive conduct of inherent First Amendment significance, such as picketing, boycotting, canvassing, and distributing pamphlets." Meaney v. Dever, 326 F.3d 283, 287-88 (1st Cir. 2003). And since horn-honking is not "commonly associated with expression" it can be regulated. See Lakewood, 486 U.S. at 760.

To be facially overbroad, the ordinance's offending overbreadth must be both "real" and "substantial," judged in the context of its legitimate sweep:

[F]acial overbreadth adjudication is an exception to our traditional rules of practice [I]ts function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from ‘pure’ speech toward conduct and that conduct – even if expressive – falls within the scope of otherwise valid criminal laws that reflect legitimate state interests[.] . . . Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect – at best a prediction – cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. To put the matter another way, particularly where conduct and not merely speech is involved . . . the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep.

Broadrick, 413 U.S. at 615; accord, Tacoma v. Luvone, 118 Wn.2d at 839-40 (ordinance which regulates behavior rather than pure speech will not be overturned unless overbreadth both “real” and “substantial”). Horn-honking at a peace rally is a rare and thus very incidental use of a car horn. Any overbreadth in the ordinance is thus neither “real” nor “substantial.” See Tacoma v. Luvone, 118 Wn.2d at 839-40 (citing the two-pronged standard); see City of Dallas v. Stanglin, 490 U.S. 19, 25, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989) (“It is possible to find some kernel of expression in almost every activity a person undertakes – for example, walking down the street or meeting one’s friends at a shopping mall – but such a

kernel is not sufficient to bring the activity within the protection of the First Amendment.”)

In Holland v. Tacoma, the appellate court examined an anti-noise ordinance that prohibited playing a car sound system at a level audible at a distance greater than 50 feet. It had fewer time, place, and manner restrictions than Snohomish County’s ordinance (e.g., it criminalized such conduct at the outset, without the benefit of an initial civil warning, and did so under all circumstances if conduct exceeded a defined volume); and it regulated a medium (music and the spoken word, from a car radio and/or from CD’s or tapes) with far more expressive content than a horn honk can possibly contain. Since that noise ordinance was upheld, this one surely should be as well. Holland, 90 Wn. App. at 540-43.

Similarly, in Grayned v. Rockford, the United States Supreme Court upheld an anti-noise ordinance, as against a contention that its terms were broad enough to prohibit constitutionally protected speech, noting that the only speech which it would prohibit was that which was disruptive. (Grayned upheld an ordinance prohibiting a person while on grounds adjacent to a school from willfully making noise or a diversion that disturbed or tended to disturb the peace or good order of the school session.)

Grayned v. Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). And in Rock Against Racism, the same court examined and upheld a noise ordinance designed to ensure that music performances in a band shell in Central Park did not disturb surrounding residents, by requiring performers to use sound systems and a sound technician provided by the city of New York. Rock Against Racism, 491 U.S. at 791-803. The reasoning of those cases would uphold Snohomish County's anti-noise ordinance.

The petitioner disagrees, citing the example of horn-honking at pro- or anti-war rallies, and asserting that this ordinance, on its face, prohibits such expressive conduct, and is therefore unconstitutional on its face.

But under that hypothetical, alternate and far more expressive media remain: One can, for example, yell for peace, hold a sign for peace, or ring a bell for peace, or engage in any number of other forms of speech or expressive conduct for or against a public policy choice; but the use of a car horn – a device with very little expressive capability and a great deal of disturbance potential – is limited to public safety warnings. This is an

“incidental” restriction to further a substantial government interest. The ordinance thus should survive overbreadth analysis.

Alternatively, if one were to conclude that such use of a car horn at a political rally is indeed a “particularized message,” with a great likelihood it would be understood by those who hear it – a point respondent respectfully does not concede – the application of an anti-noise ordinance to such expressive conduct would then, with that assumption, likely not survive an “as applied” challenge. There would be no need, in that case, to turn to the “strong medicine” of the overbreadth doctrine, *which should be applied only as a last resort*. New York v. Ferber, 458 U.S. 747, 769, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982) (sustaining child pornography law against overbreadth challenge).

The petitioner relies heavily on two cases. One is not particularly helpful as precedent; the other, applied to *these* facts, would affirm this conviction.

Eugene v. Powlowski involved horn honking at competing pro- and anti-war rallies where citations ensued. The Oregon Court of Appeals found an anti-noise ordinance similar to that here unconstitutionally overbroad under that state’s constitution, relying solely on Oregon caselaw. It ignored the entire body of U.S.

Supreme Court jurisprudence. City of Eugene v. Powlowski, 116 Or. App. 186, 840 P.2d 1322 (Or. 1992). A concurrence opined that the matter should have been decided on an as-applied basis. Powlowski, 840 P.2d at 1325-27. Decided solely on Oregon grounds, Powlowski carries little precedential weight.

Goedert v. City of Ferndale is more instructive. There, a municipal ordinance sought not only to limit honking to traffic warnings, but also to prohibit signs encouraging honking at political rallies. It thus was content based and squarely placed in a setting of “expressive speech,” as distinguished from a content-neutral ordinance that only incidentally impacted such settings. A federal trial court struck it down on competing summary judgment motions. Goedert v. City of Ferndale, 596 F.Supp.2d 1027 (E.D. Mich., 2008). But the federal trial court took pains to explain that under the definition in Texas v. Johnson, it found horn-honking there to be “speech” *only because of the context in which it occurred*. Goedert, 596 F.Supp.2d at 1031, citing Texas v. Johnson, 491 U.S. at 404. This is identical to the Court of Appeals reasoning on review here. Immelt, 150 Wn. App. at 686-87, n.9, 10, & 11 (citing Johnson, 491 U.S. at 404). Goedert’s reasoning, applied to the facts of what this

petitioner actually did, would uphold Snohomish County's ordinance.

Local ordinances, like statutes, are presumed constitutional. Kitsap County v. Mattress Outlet/Gould, 153 Wn.2d 506, 509, 104 P.3d 1280 (2005). Consistent therewith, on review this Court will, if possible, limit and construe an ordinance to sustain it against facial constitutional challenge. Tacoma v. Luvane, 118 Wn.2d at 840, 842 (ordinance will be overturned for overbreadth only if court unable to place "a sufficiently limiting construction on a standardless sweep of legislation;" court then construes drug-loitering ordinance to be constitutional by finding a requisite mental state); O'Day v. King County, 109 Wn.2d at 806 (construing potentially overbroad county ordinance to proscribe only nude and semi-nude conduct and unprotected obscene expression). If this court believes any overbreadth here goes beyond the incidental, and is "real": and "substantial," it should similarly construe Snohomish County's anti-noise ordinance to proscribe only unprotected conduct.

To invalidate this ordinance as overbroad – especially with these facts – would mean a local government could not protect a

resident from an angry neighbor who decides to lay on his or her car horn for five minutes, ten minutes, or an hour.

This petitioner did not engage in true "speech" at all. She sought to harass and annoy her neighbors by blasting a car horn on a Saturday morning. This is the very thing a valid local anti-noise ordinance sought to deter. Her conviction for violating it should be affirmed.

II. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on January ¹⁵14, 2010.

MARK K. ROE
Snohomish County Prosecutor

by: 
CHARLES FRANKLIN BLACKMAN, #19354
Deputy Prosecuting Attorney
Attorney for Respondent

Relevant Provisions of Snohomish County Code

Chapter 10.01 – Noise Control

SCC 10.01.010 Declaration of policy – Findings.

(1) Purpose. The purpose of this chapter is to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the express intent of the county to control the level of noise in a manner which promotes the use, value and enjoyment of property; sleep and repose; commerce; and the quality of the environment.

SCC 10.01.020 Definitions.

(25) "Public disturbance noise" means any sound which, because of its random or infrequent occurrence, is not conducive to measurement under the quantitative standards established in SCC 10.01.030; and endangers or injures the safety or health of humans or animals, or endangers or damages personal or real property, or annoys, disturbs or perturbs any reasonable person of normal sensitivities, or is specifically included in those listed in SCC 10.01.04 (1) or 10.01.040(2).

SCC 10.01.040 Public disturbance noise.

It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise.

(1) Public Disturbance Noises, Day and Night. Sounds resulting from the following activities, occurring at any hour of the day or night, are determined to be public disturbance noises.

* * *

(d) The sounding of vehicle horns for purposes other than public safety.

SCC 10.01.080 Enforcement and appeals.

* * *

(3) Public Disturbance Enforcement. Any person found to be in violation of the provisions of section SCC 10.01.040 governing public disturbance noise . . . shall be deemed to have committed a civil infraction as established in Chapter 7.80 RCW and for each violation shall be subject to a civil penalty of \$50; provided that penalties for an additional separate violation of a like nature by the same person within a one year period shall be \$100; and provided further that any second violation within a 24 hour period shall constitute a misdemeanor punishable by incarceration for a period not to exceed 90 days and/or monetary fine not to exceed \$1,000. Any person charged with a civil infraction under the provisions of section SCC 10.01.040 . . . shall respond to the notice of infraction in the manner set forth in Chapter 7.80 RCW. Where a person has been found to have committed the same offense in violation of SCC 10.01.040 . . . three or more times in a one year period, a subsequent charge brought within one year of the last adjudication constitutes a misdemeanor punishable by incarceration for a period not to exceed 90 days and/or a monetary fine not to exceed \$1,000.