



**Board Summary Report**

**Date:** August 25, 2020  
**To:** Board of County Commissioners  
**Through:** **Bryan Weimer, Director, Public Works and Development**  
**Jan Yeckes, Planning Division Manager**  
**From:** **Caitlyn Cahill, Zoning and Animal Services Manager**  
**Subject:** Noise Regulations and Enforcement

**Information:**

Public Works and Development staff will be providing information to the Board of County Commissioners (BoCC) regarding existing noise regulations in place, and common complaint types that are reported throughout the County.

**Request:**

The Department of Public Works and Development, Planning Division, Zoning Section is primarily providing information regarding the current regulations and authority as it pertains to noise concerns within commercial and residential areas of unincorporated Arapahoe County.

Staff is requesting input and feedback from the BoCC on their interest to have staff pursue researching and recommending additional regulations.

**Background and Discussion:**

Below are the various regulations and authorities throughout unincorporated Arapahoe County that address noise issues, in some capacity. Both the Arapahoe County Sheriff's Office and Arapahoe County Zoning have minimal authority when it comes to noise complaints in residential neighborhoods; however, based on the amount and type of complaints received, staff believe the regulations in place are sufficient to meet the needs of the County overall.

**Arapahoe County Zoning Noise Regulations**

Commercial and Industrial Noise Regulations: While complaints in non-residential zone districts are very rare due to the standards in place regulating use types in the various districts, there are mechanisms in place that can be used to address noise complaints.

Zone districts B-3, B-4, B-5, I-1, and I-2 all have design standards in place to address noise concerns at the property line.

*The effects of dust, fumes, odors, refuse, smoke, vapors, and **noise** shall not extend beyond property lines.*

If a complaint was received regarding noise in any of the above zone districts, Zoning staff would investigate the use of the property to confirm that it complies with the permitted uses in that district. Additionally, Zoning would have the authority to address any violations of noise exceeding past the property lines. If the business owner failed to comply with the request to resolve the violation, a civil law suit would be filed by the County Attorney's office for the zoning violation.

Residential Noise Regulations: Zoning staff occasionally receives complaints for noise that would not be in violation of other regulations in place. More often than not, staff is able to either require a permit for an event causing noise (a temporary use permit for a concert) or address illegal use of a residential property (a person using their garage as a woodworking shop or machine shop), essentially resolving the concern surrounding the noise issue.

As mentioned above, staff infrequently receives complaints that are not a result of a violation of existing regulations. Some of the most recent complaints received involve music from parties at homes lasting into the late hours of the night and people using power tools for personal home projects. These situations most often occur during the evenings, weekends, and holidays, when zoning staff are not on shift. When this occurs, the citizen often contacts the Arapahoe County Sheriff's Department.

Noise Complaints Regarding Construction: Complaints in residential neighborhoods, due to ongoing development, is one of the most common complaints staff receives. When receiving these complaints, Public Works and Development staff reaches out to the contactor and advises them of C.R.S. 25-12-103, which regulates noise levels between specific hours of the day, based on the location/zone district (residential, commercial, light industrial, industrial). Contractors normally honor this statute and staff does not regularly receive additional complaints throughout the rest of the construction project. With that being said, this is statute is fairly complex and relies on ability to measure decibels of sound occurring, which would be difficult to enforce without voluntary compliance.

### **Arapahoe County Sheriff's Office**

The Arapahoe County Sheriff's Office has experience with two different regulations when it comes to noise complaints.

The City of Centennial has enacted a noise ordinance, which the Sheriff's Office enforces. The noise ordinance, while used on occasion within the City, is very difficult to enforce. Frequently, the person reporting noise wants to stay anonymous, limiting the ability of enforcement.

For unincorporated Arapahoe County, the Sheriff's Office relies on the Disorderly Conduct statute (C.R.S. 18-9-106) which says it is illegal to make unreasonable noise in a public place or near a private residence they have no right to occupy.

Feedback received from Arapahoe County Sheriff's Office Bureau Chief Glenn Thompson is that C.R.S. 18-9-106 is appropriate and sufficient for most of the noise complaints that the Sheriff's Office receives.

### **Links to Align Arapahoe:**

Fiscal Responsibility: Creating new and/or more in-depth noise regulations would require the addition of equipment and personnel resources, essentially increasing the cost associated with enforcement efforts.

There may be requirements for extended hours of operation during evenings and weekends, equipment necessary to determine if a violation exists at the property line, and potentially additional staffing.

**Alternatives:**

Staff is requesting direction on how the BoCC would like staff to proceed.

1. Staff Recommendation: Continue to operate under existing authority and do not proceed with additional regulation research and drafting.
2. Research and draft proposed regulations for noise complaints in the each of the following zoning areas:
  - a. Residential Urban/Suburban
  - b. Commercial/Industrial
  - c. Agricultural/Rural residential

It is the recommendation of staff, if the BoCC is interested in proceeding with additional noise regulations in all of the above zoned areas, that the 3 categories listed above be addressed separately and with different levels of regulations.

**Fiscal Impact:**

The adoption of regulations pertaining to noise in residential areas would likely result in an increase in enforcement costs and could impact multiple departments within the County. Further findings and research would be presented to the BoCC, if there is a desire to move in the direction of adding or modifying existing regulations.

**Attached Documents:**

- C.R.S. 25-12-103. Maximum Permissible Noise Levels
- City of Centennial: Article 12- Noise Regulations
- C.R.S. 18-9-106. Disorderly Conduct Statute

**Reviewed By:**

- Bryan Weimer, Director – Public Works and Development
- Glenn Thompson, Bureau Chief- Sheriff's Office
- Jan Yeckes, Division Manager – Planning
- Robert Hill, Assistant County Attorney – County Attorney's Office
- Keith Ashby, Purchasing Manager – Finance Department
- Todd Weaver, Budget Manager – Finance Department

# Colo. Rev. Stat. § 25-12-103

Section 25-12-103 - Maximum permissible noise levels

(1) Every activity to which this article is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. Sound levels of noise radiating from a property line at a distance of twenty-five feet or more therefrom in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such noise is a public nuisance:

<b>Zone</b>	<b>7:00 a.m. to next 7:00 p.m.</b>	<b>7:00 p.m. to next 7:00 a.m.</b>
Residential	55 db(A)	50 db(A)
Commercial	60 db(A)	55 db(A)
Light industrial	70 db(A)	65 db(A)
Industrial	80 db(A)	75 db(A)

(2) In the hours between 7:00 a.m. and the next 7:00 p.m., the noise levels permitted in subsection (1) of this section may be increased by ten db(A) for a period of not to exceed fifteen minutes in any one-hour period.

(3) Periodic, impulsive, or shrill noises shall be considered a public nuisance when such noises are at a sound level of five db(A) less than those listed in subsection (1) of this section.

(4) This article is not intended to apply to the operation of aircraft or to other activities which are subject to federal law with respect to noise control.

(5) Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.

(6) All railroad rights-of-way shall be considered as industrial zones for the purposes of this article, and the operation of trains shall be subject to the maximum permissible noise levels specified for such zone.

(7) This article is not applicable to the use of property for purposes of conducting speed or endurance events involving motor or other vehicles, but such exception is effective only during the specific period of time within which such use of the property is authorized by the political subdivision or governmental agency having lawful jurisdiction to authorize such use.

(8) For the purposes of this article, measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five miles per hour.

(9) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

**(10)** This article is not applicable to the use of property for the purpose of manufacturing, maintaining, or grooming machine-made snow. This subsection (10) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

**(11)** This article is not applicable to the use of property by this state, any political subdivision of this state, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays. This subsection (11) shall not be construed to preempt or limit the authority of any political subdivision having jurisdiction to regulate noise abatement.

**(12)**

**(a)** Notwithstanding subsection (1) of this section, the public utilities commission may determine, while reviewing utility applications for certificates of public convenience and necessity for electric transmission facilities, whether projected noise levels for electric transmission facilities are reasonable. Such determination shall take into account concerns raised by participants in the commission proceeding and the alternatives available to a utility to meet the need for electric transmission facilities. When applying, the utility shall provide notice of its application to all municipalities and counties where the proposed electric transmission facilities will be located. The public utilities commission shall afford the public an opportunity to participate in all proceedings in which permissible noise levels are established according to the "Public Utilities Law", articles 1 to 7 of title 40, C.R.S.

**(b)** Because of the statewide need for reliable electric service and the public benefit provided by electric transmission facilities, notwithstanding any other provision of law, no municipality or county may adopt an ordinance or resolution setting noise standards for electric transmission facilities that are more restrictive than this subsection (12). The owner or operator of an electric transmission facility shall not be liable in a civil action based upon noise emitted by electric transmission facilities that comply with this subsection (12).

**(c)** For the purposes of this section:

**(I)** "Electric transmission facility" means a power line or other facility that transmits electrical current and operates at a voltage level greater than or equal to 44 kilovolts.

**(II)** "Rights-of-way for electric transmission facilities" means all property rights and interests obtained by the owner or operator of an electric transmission facility for the purpose of constructing, maintaining, or operating the electric transmission facility.

*C.R.S. § 25-12-103*

L. 71: p. 648, § 1. C.R.S. 1963: § 66-35-3. L. 82: (10) added, p. 424, § 1, effective March 11. L. 87: (11) added, p. 1154, § 1, effective May 20. L. 2004: (12) added, p. 736, § 2, effective July 1.

*For the legislative declaration contained in the 2004 act enacting subsection (12), see section 1 of chapter 219, Session Laws of Colorado 2004.*

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## ARTICLE 12 - Noise Regulation

### Sec. 10-12-10. - Legislative declaration.

It is hereby declared that protection and preservation of the home is of the highest importance; that unnecessary and excessive noise is a significant source of environmental pollution that threatens the public health, welfare, tranquility and good order of the community; and that the prohibitions and other protections set forth in this Article are enacted to secure and promote public peace, welfare, comfort and health.

(Ord. 2007-O-16 §1)

### Sec. 10-12-20. - General prohibition.

It shall be unlawful for any person to make, continue or cause to be made or continued any excessive or unusually loud noise which:

(1)Disturbs, annoys or endangers the peace, repose, comfort, safety or health of others; or(2)Endangers or injures personal or real property.

(Ord. 2007-O-16 §1)

### Sec. 10-12-30. - Exceptions.

The provisions of this Article shall not apply to:

(1)Operation of emergency vehicles when acting in times of emergency.(2)Operation of trains, aircraft or other activities subject to federal law with respect to noise control.(3)Mechanical devices, apparatus or equipment used, related to or connected with any emergency machinery, vehicle or work when responding to an emergency.(4)Operation of snowplows.(5)Use of property by the State, any political subdivision thereof or any other not-for-profit entity, or any lessees, licensees or permittees of the same, for promotion, producing or holding of occasional public cultural, athletic, entertainment or patriotic events for which prior City consent or permit has been obtained in writing.(6)Noises emanating from any school property as a result of usual and customary uses of such school property during school or school-sponsored events, including but not limited to school band practices and performances.(7)Public utility operations regulated pursuant to state law.(8)Lawful professional outdoor fireworks displays permitted pursuant to Article 10, of this Chapter 10.

(Ord. 2007-O-16 §1)

### Sec. 10-12-40. - Penalty for violations.

(a)Any penalty assessment or summons and complaint which issues for violation of this Article shall be signed by an officer witness, or by at least two (2) complaining witnesses from separate households who are willing to testify at trial, in addition to the signature of the serving officer, or by only one (1) complaining witness other than the serving officer if there exists other evidence admissible at trial to prove a prima facie case of a violation of this Section.(b)Any person who violates this Article commits a minor offense, and upon conviction thereof, shall be punished by a fine of not more than the maximum fine amount authorized in Section 1-4-10 of this Code, with a minimum fine of one hundred dollars (\$100.00) for a first offense, two hundred dollars (\$200.00) for a second offense and four hundred

dollars (\$400.00) for a third and any subsequent offense. A mandatory court appearance shall be required for any third or subsequent offense. The penalty assessment procedure provided in Section 16-2-201, C.R.S., shall be followed by the arresting Sheriff's deputy or other officer for any violation of this Article, and the graduated fine schedule set forth herein shall be followed when issuing any penalty assessment or summons and complaint in accordance with such procedure.

(Ord. 2007-O-16 §1; Ord. 2013-O-19 §21)

Sec. 10-12-50. - Other remedies.

Violations of this Article are also declared to be a public nuisance for which the City may, in addition to the remedy for violation set forth in Section 10-12-40 above, seek summary abatement or abatement by other means, including seeking a restraining order or injunction issued by a court of competent jurisdiction. This Article shall not be construed to conflict with the right of any person to maintain any private action for damages or to abate a noise nuisance as provided by law.

(Ord. 2007-O-16 §1)

**Document: C.R.S. 18-9-106**

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**C.R.S. 18-9-106****Copy Citation**

The Colorado Constitution and Titles 3, 4, 21, and 41 have been updated and are current through all laws passed during the 2020 Legislative Session, subject to review by the Colorado Office of Legislative Legal Services. Other statutory titles are current through all laws passed during the 2019 Legislative Session and are in the process of being updated.

**CO - Colorado Revised Statutes Annotated**   **TITLE 18. CRIMINAL CODE**   **ARTICLE 9. OFFENSES AGAINST PUBLIC PEACE, ORDER, AND DECENCY**   **PART 1. PUBLIC PEACE AND ORDER**

**18-9-106. Disorderly conduct**

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(1) A person commits **disorderly conduct** if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) (Deleted by amendment, L. 2000, p. 708, § 39, effective July 1, 2000.)

(c) Makes unreasonable noise in a public place or near a private residence that he has no right to occupy; or

(d) Fights with another in a public place except in an amateur or professional contest of athletic skill; or

(e) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or

(f) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

(2) Repealed.

(3) (a) An offense under paragraph (a) or (c) of subsection (1) of this section is a class 1 petty offense; except that, if the offense is committed with intent to disrupt, impair, or interfere with a funeral, or with intent to cause severe emotional distress to a person attending a funeral, it is a class 2 misdemeanor.

(b) An offense under paragraph (d) of subsection (1) of this section is a class 3 misdemeanor.

(c) An offense under paragraph (e) or (f) of subsection (1) of this section is a class 2 misdemeanor.

**History**

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**Source:** L. 71: R&RE, p. 467, § 1. **C.R.S. 1963:** § 40-9-106. L. 72: p. 275, § 8. L. 81: (1)(a) amended, p. 1010, § 1,

effective April 24. L. 2000: IP(1), (1)(b), and (1)(f) amended, pp. 696, 708, § 11, 39, effective July 1. L. 2006: (3) amended, p. 1198, § 3, effective May 26; (2) repealed, p. 1493, § 21, effective June 1. L. 2014: (1)(e) amended, (HB 14-1059), ch. 22, p. 153, § 1, effective March 7.

## ▼ Annotations

### Notes

**Editor's note:** In *Snyder v. Phelps*, 562 U.S. 443 (2011), the United States Supreme Court held that the first amendment shielded military funeral protesters from tort liability for their picketing because the picketing constituted speech on matters of public concern and because the father of the deceased was not a member of a captive audience.

**Cross references:** (1) For affirmative defenses generally, see § 18-1-407, 18-1-710, and 18-1-805.

(2) In 2006, subsection (3) was amended by the "Right to Rest in Peace Act". For the title and legislative declaration, see section 1 of chapter 262, Session Laws of Colorado 2006.

### Case Notes

#### ANNOTATION

**Annotator's note.** Since § 18-9-106 is similar to former § 40-8-1, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

**Former subsection (1)(a) was unconstitutional** because it was facially overbroad and could not be restrictively construed. *Hansen v. People*, 190 Colo. 457, 548 P.2d 1278 (1976).

**Subsection (1)(b) held unconstitutional.** Statute facially overbroad because it may prohibit constitutionally protected speech as well as unprotected speech. *Aguilar v. People*, 886 P.2d 725 (Colo. 1994).

**Subsection (1)(a) applicable to speech.** Subsection (1)(a) prohibits certain types of utterances, gestures, and displays in a public place. It is clear that the statute's proscription applies to speech and "expression closely akin to speech". *Hansen v. People*, 190 Colo. 457, 548 P.2d 1278 (1976).

**The statute does not prohibit utterances, gestures, or displays that inflict injury**, but only those that tend to incite an immediate breach of the peace. *People in Interest of R.C.*, 2016 COA 166, 411 P.3d 1105.

**The term "public place" does not include a public building covered by the specific provisions of § 18-9-110.** The court found that the Colorado legislature has excluded from the term "public place" those areas mentioned in other statutes. Therefore, the court dismissed **disorderly conduct** charges arising out of alleged threats made to the staff of a veteran's administrative hospital within one of the hospital buildings. *U.S. v. Wright*, 864 F. Supp. 1013 (D. Colo. 1994).

**The "immediate breach of the peace" limiting clause in subsection (1)(a) is explicitly meant to limit liability to "fighting words".** *Brandt v. City of Westminster*, 300 F. Supp. 3d 1259 (D. Colo. 2018).

**For sufficiency of evidence**, see *Flores v. City County of Denver*, 122 Colo. 71, 220 P.2d 373 (1950).

**State statute as to disturbing the peace not superseded by nonconflicting home-rule ordinance.** *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971).

**The actus reus of felony menacing** is "placing another person in fear of imminent serious bodily injury by the use of a deadly weapon", an act more specific than the actus reus of **disorderly conduct** with a deadly weapon, which is displaying a deadly weapon in an alarming manner in a public place. Therefore, it does not violate the equal protection clause of article II, section 25, of the Colorado constitution to subject defendants to potential criminal liability under both statutes. *People v. Torres*, 848 P.2d 911 (Colo. 1993).

**No equal protection violation was found** in defendant's claim that the **conduct** proscribed by § 18-3-206 (felony menacing), a class 5 felony, was indistinguishable from the **conduct** proscribed in subsection (1)(f) of this section, a class 2 misdemeanor, in which the actus reus is less specific than the actus reus in § 18-3-206. *People v. Ibarra*, 849 P.2d 33 (Colo. 1993).

It is only when the same **conduct** is proscribed in two statutes and different criminal sanctions apply, that problems arise under equal protection. *People v. Ibarra*, 849 P.2d 33 (Colo. 1993).

**Defendant's display of a crudely altered photo did not amount to fighting words because it was not likely to incite an immediate breach of the peace.** *People in Interest of R.C.*, 2016 COA 166, 411 P.3d 1105.

COLORADO REVISED STATUTES

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