

# EXECUTIVE ORDER



DISTRICT OF COLUMBIA

Subject: <b>Disorderly Conduct – Noise at Night</b>
Number <b>EO-17-018</b>
Effective Date <b>June 9, 2017</b>
Related To: GO-SPT-302.01 (Calls for Service) GO-SPT-401.01 (Field Reporting System) SOP-05-02 (PD Form 61D)

## I. PURPOSE

The purpose of this executive order is to provide guidance to members who respond to or who encounter situations involving “Disorderly Conduct, Noise at Night” and to announce new procedures for custodial arrests involving that charge.

## II. PROCEDURES

A. Members are reminded that:

1. In accordance with D.C. Official Code § 22-1321(d), “it is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.”
2. Disorderly conduct arrests, including “Disorderly Conduct, Noise at Night,” **shall not** be based on an individual’s conduct or language toward a member. Disorderly conduct arrests based merely on a person’s language, volume of voice, gestures, or attitude toward law enforcement are not lawful arrests.
3. When possible, members should attempt to resolve disorderly conduct situations with other means before making an arrest. Education and negotiation are strong tools for addressing disorder issues.

B. “Disorderly Conduct, Noise at Night” is **not** a probable cause misdemeanor. Members must witness the offense in order to make an arrest, or seek an arrest warrant.

C. Prior to making an arrest, whether custodial or non-custodial, members shall give a warning and provide a reasonable amount of time for the person to comply. When determining what constitutes a reasonable amount of time, members must take into consideration the amount of time it will take the person to cease the activity causing the noise. For example, a complaint

involving loud music may be remedied quickly by turning the music down or off. However, disbanding a large group of people may take a longer time to remedy.

- D. **Members shall not make a custodial arrest for “Disorderly, Noise at Night” without first calling an official, the rank of lieutenant or above, to the scene.**
- E. Members are reminded that they may make a non-custodial arrest for “Disorderly, Noise at Night” by issuing a PD Form 61D (Field Arrest Citation) in accordance with SOP-05-02 (PD Form 61D).
- F. When making a determination on charging a person with “Disorderly Conduct, Noise at Night,” members are reminded of the following:
1. The content of the speech, music or other communications is not relevant. The law addresses the volume of the conduct, not its content or meaning.
  2. The noise must occur between 10:00 p.m. and 7:00 a.m. Members should confirm the time with the dispatcher when making an arrest under this provision.
  3. The noise must be likely to annoy or disturb one or more persons in their residences (e.g., not offices, stores, cars). However, it is not required that the noise was heard by a person in a home, only that it was likely to be heard.
  4. The noise does not have to occur on public space. The noise can occur anywhere it is likely to annoy or disturb people in their residences, including in other people’s homes.
  5. When a noise complaint involves a business that is regulated through the city, such as a bar, restaurant or store, the first step would be to refer it to the regulatory agency for that business. An arrest shall only be considered after efforts have been made to resolve the complaint through the other regulatory agencies, and the district commander and possibly MPD General Counsel have been consulted.
- G. When completing arrest narratives for “Disorderly Conduct, Noise at Night” members are reminded to document:
1. What the defendant was doing to cause the noise.
  2. How they confirmed that the offense occurred between 10:00 p.m. and 7:00 a.m.

3. Where the dwelling(s) is/are located in relationship to location of the offense.
  4. In cases where no complaints were received about the noise, how they determined that the noise could likely be heard from the dwellings, and what was done to confirm this. For instance, could the member hear the noise from the other end of the block?
  5. What specific warnings were given, who gave them, how many warnings were given, and the time(s) they were given.
  6. How much time was given between warning(s) and arrest.
- H. Members are reminded that the Noise Control Act of 1977 (D.C. Law 2-53, as amended; 20 DCMR §§ 2700 - 2900) requires decibel levels to be measured by the Department of Consumer Regulatory Affairs (DCRA), and therefore, they shall not make any arrests under the Noise Control Act.



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PN:KDO:MOC